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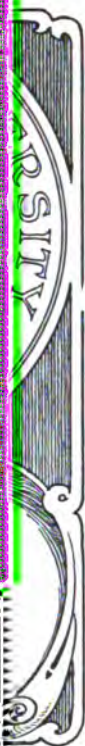
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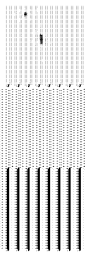
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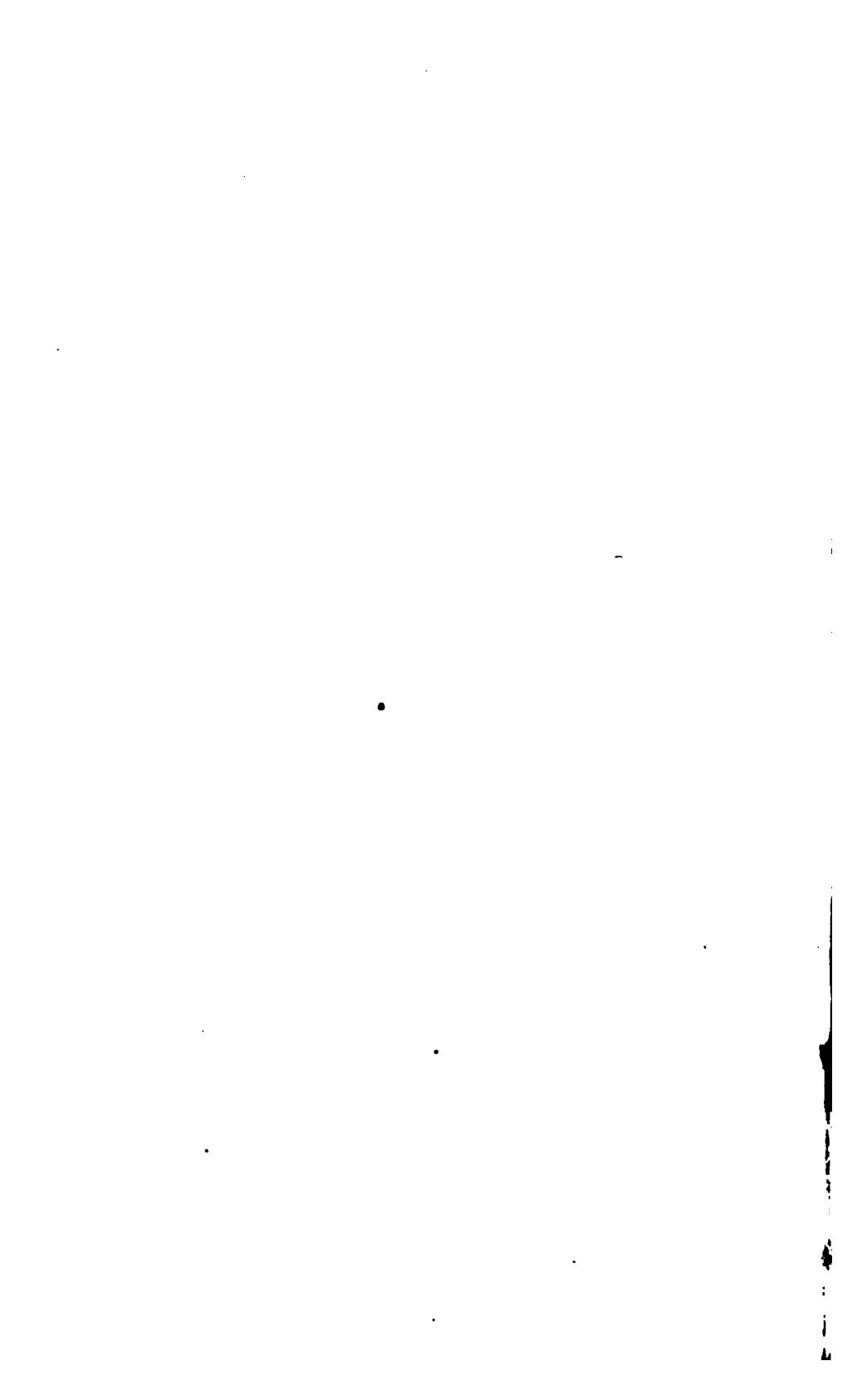
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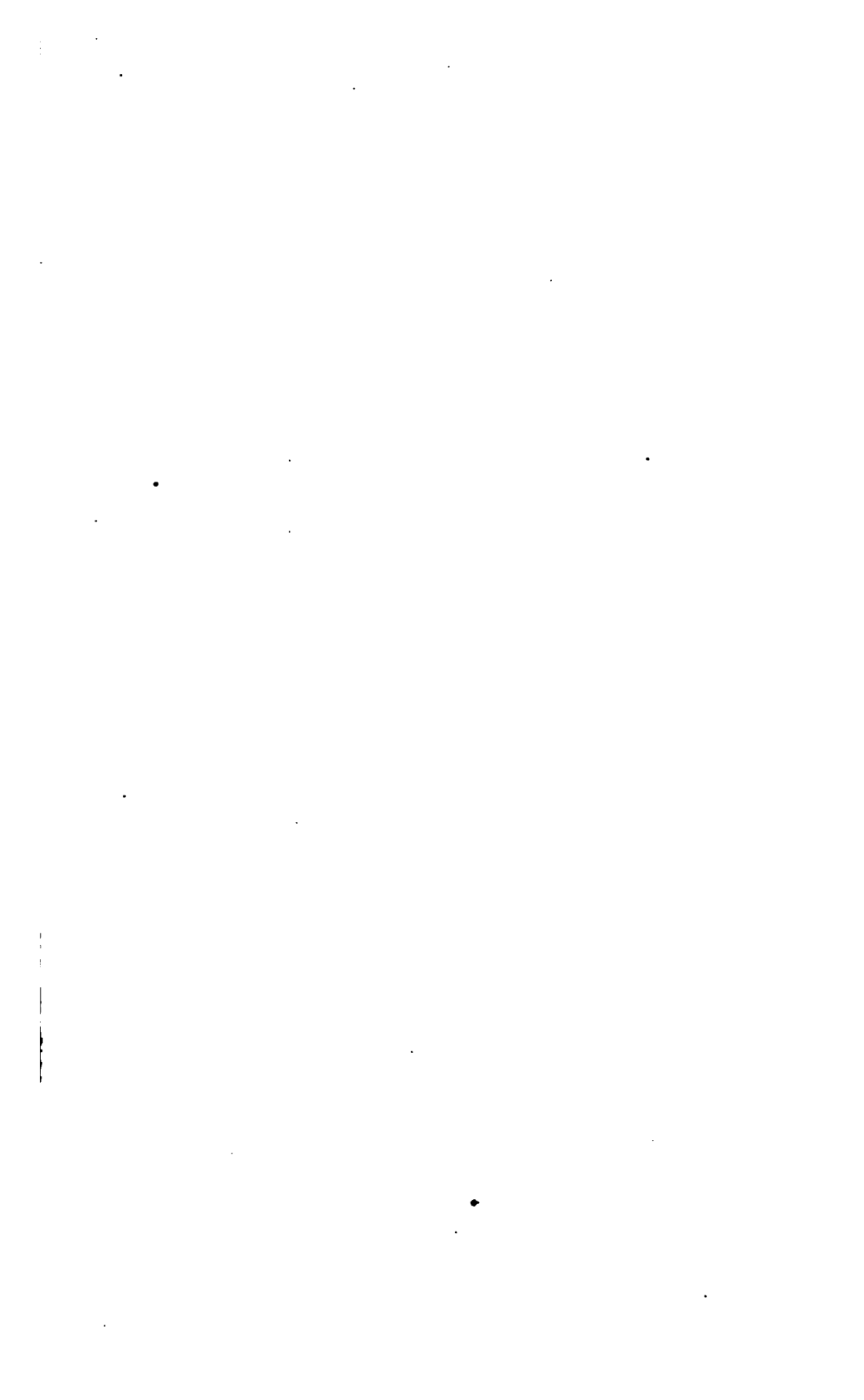
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*French . . . . .*

THE  
COMMERCIAL CODE OF FRANCE,

WITH  
THE MOTIVES,

*M. L. M. . . . .*  
*1886*

OR  
DISCOURSES OF THE COUNSELLORS OF STATE,

DELIVERED  
BEFORE THE LEGISLATIVE BODY,

ILLUSTRATIVE  
OF THE PRINCIPLES AND PROVISIONS

OF  
THE CODE.

---

TRANSLATED FROM THE FRENCH, WITH EXPLANATORY NOTES, AND A COMPLETE  
ANALYTICAL INDEX.

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BY JOHN RODMAN,  
COUNSELLOR AT LAW:

*NEW YORK: . . . . .*

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C. Wiley, Printer.

1814.

L 7382

AUG 19 1933

DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, that on the twenty-fourth day of March, in the thirty-eighth year of the Independence of the United States of America, JOHN RODMAN, of the said district, hath deposited in this office the title of a book, the right whereof he claims as author, in the words following, to wit:

"The Commercial Code of France, with the Motives, or Discourses of the Counsellors of State, delivered before the Legislative Body, illustrative of the Principles and Provisions of the Code. Translated from the French, with Explanatory Notes, and a complete Analytical Index. By JOHN RODMAN, Counsellor at Law."

IN CONFORMITY to the act of Congress of the United States, entitled "An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned;" and also to an act, entitled "An act, supplementary to an act, entitled an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

THERON RUDD,  
Clerk of the District of New-York.

VERIFIED & CORRECTED

## PREFACE.

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THE Commercial Code of France, a translation of which is now offered to the public, forms an important, though not a very voluminous part of the great system of jurisprudence, established in that country since the revolution.

I had originally intended to publish a translation of all the French codes, and issued proposals, upwards of a year ago, to that effect, having then ready for the press a great part of the Code Napoleon, with which the series was to commence ; but not obtaining a sufficient number of subscribers to authorize the printing of so large a work, I was obliged entirely to abandon the project.

To the gentlemen of the bar of New York, I feel, indeed, greatly obliged by the prompt and liberal encouragement which they afforded to my literary undertaking; and had my subscription papers been proportionably successful in the other great cities of the Union, I should, long since, have presented the public with the fruit of my labours. But although it was generally admitted, that the new system of jurisprudence adopted in France was entitled to the highest commendation, as a production of wisdom and learn-

ing, yet, from the magnitude of the work, the state of the times, the negligence of the persons employed to solicit subscriptions, or, possibly, from some doubts in regard to the ability of the translator for the execution of his task, but a very meager list of subscribers was obtained. Being, therefore, compelled to lay aside my translation, as far as it had advanced, I thought no more of the work, till about the beginning of the winter, when having, in the course of my professional business, occasion to examine some points in the law of insurance, I was led to consult the new Commercial Code of France on that subject. It then occurred to me, that as this code embraces so many questions of general interest and importance to the mercantile world, and its provisions, in many cases, though bearing a strong resemblance to the English law on these subjects, yet differing from that law in some important points, it might be worth while to publish a separate translation of it, which I thought might be done without incurring a very great risk. Accordingly I set about the work, and in the course of a short time had it ready for the press, when I was informed that it had already been translated and published in a magazine printed in Philadelphia, called the American Review.

This translation, I have understood, was furnished by a distinguished civilian of the bar of Pennsylvania; and most assuredly, after knowing this circumstance, I should never have thought of publishing mine, had that gentleman's been printed in a form better calculated for general circulation and professional use; but appearing in a journal devoted principally to party po-



## Preface.

litics, it assumes too little the air of a regular treatise to obtain that regard and consideration, which, it appears to me, are justly due to a work of the nature and merit of the Commercial Code of France. On looking into the translation in the Review, I soon perceived that it differed very widely in style and manner from the one which I had prepared; and as I had also translated *The Motives*, or discourses of the counsellors of state, containing a luminous and interesting discussion of the various principles and provisions of the code, which are not published in the magazine above mentioned, I concluded that I might venture to print my translation, with some chance of success, and without incurring the imputation of plagiarism. I have also added some notes, which are printed at the end of the volume. I do not know that they are necessary to the understanding of the text; they may, however, contribute to awaken curiosity on some of the subjects to which they refer, and lead to a deeper investigation of the principles contained in the code. They might, indeed, have been easily extended much farther, for it is not a difficult, though a troublesome task, to write notes; but I am no friend to copious annotation, unless it tend to throw light on some obscure passage, or to illustrate some important principle in a work.

In order that those who are acquainted with the French language may judge of the fidelity of my translation, and also, with a view of obviating any misapprehension which may arise, in regard to the exact meaning of any particular expression or clause in the French law, should this code, like the ordinances of Louis XIV.

be cited in our courts, as authority in favour of any general principle of commercial law, or in any controversy in which the laws of France should be brought in question, I have thought it might be useful to have the original text printed with the translation, on the opposite page of the book. By this means also, students at law, and those of the profession who have only a slight knowledge of French, may have an opportunity of cultivating and extending it, while, at the same time, they are acquiring a more general acquaintance with the various and important principles of the *Lex Mercatoria*.

Should the present work receive the approbation of the public, it will soon be followed by the publication of the Code Napoleon and Code of Civil Procedure, which, together with the *Motives*, will form two large octavo volumes, without the original text, which is not intended to be printed, unless it should appear to be the general wish to have both the original and the translation of those two codes printed together, like the Commercial Code.

The Code Napoleon now constitutes the civil law of France. All the former laws, customs and usages, both written and unwritten, of the different provinces in that country, were entirely abolished on the introduction of this new system of jurisprudence. It is, unquestionably, a work of the highest merit, whether we consider the pure morality, the sound legal principles, and enlightened reason which pervade every part of it, or the

lucid order, precision, and method with which the matter is arranged and exhibited.

Whatever, therefore, some persons may think of the nature of the present government of France, of its stability or duration ; whatever may be the ultimate consequence of the powerful coalition now arrayed against her ; and though the star of her glory now shines with diminished lustre ; yet, as long as society and civilization exist, as long as reason, truth, and justice are prized among men, the Codes of the French empire, those splendid monuments of jurisprudence, erected by the learning and wisdom of the nation, will endure, and reflect the brightest honour on their founders.

The notion entertained by many people in this country that this system of laws is wholly founded upon arbitrary power, and, consequently, affords no security to the rights of persons, or the enjoyment of property, is equally erroneous and absurd. However arbitrary a government may be, it can never be its interest or policy to make laws, by which the bonds of society may be slackened, and the relative rights of individuals left at the mercy of accident or force.

In cases, unconnected with public policy, where the object is solely to determine the question of *meum* and *illum*, the laws of even a despotic state are quite as likely to be framed, so as to afford protection and security to private rights, as under the government of the freest republic. The excellence of laws, as they respect the mutual relations and the multifarious commerce of men in society, depends much more upon the enlightened views, and the wisdom of the lawgi-

ver, than upon the nature of the government; or the freedom of the people. In proportion to the advancement of civilization and of learning in a country, whatever may be the form of its government, the laws will be found just and pure—I mean those laws which relate to *personal* rights, and the security of property; for I am not now considering *political* rights. In the reign of Justinian, as despotic a prince as any that swayed the Roman sceptre, that magnificent system of jurisprudence which forms the body of the civil law, was raised and perfected:—a system, whatever may have been the early prejudices of the English nation against it, which contains all the elements of justice and equity between man and man, and the principles and provisions of which, at this day, strengthen and adorn the gothic fabric of the common law of England.

If we reflect upon the manner in which the different codes established by the present government of France were enacted, we cannot but entertain a very favourable opinion of their excellence. They were the productions of care, labour, and time; and the fruit of the united wisdom, genius, and researches of the best and most enlightened men of that country. Many of the most distinguished members of the old parliaments were called to assist in the formation of this new system of jurisprudence, and contributed their learning and experience to render it as perfect as possible. The discussions which took place in the council of state, on the framing of the Code Napoleon alone, make two large quarto volumes, in which every article and clause of that code are examined, and critically compared

with the former existing laws on the subject, and with those of other countries.

Still greater solicitude was manifested, and equal care taken, to give perfection to the Commercial Code. After the plan of it had been formed and discussed in the council of state, a copy of it was sent to every court of justice, and to every chamber of commerce, throughout the empire; and their separate observations required on every article which appeared susceptible of amendment. These observations, forming an immense mass of opinions, of suggestions, and of arguments, were laid before the council of state, and the code again taken into consideration, and such alterations made in it as were judged proper; after which it was submitted to the legislative body for final adoption. Human ingenuity could not have devised, nor human happiness desired, a mode better calculated to ensure perfection to a work of this nature. Not only the most distinguished judges and statesmen, but every merchant of character and respectability in France, was thus called upon to contribute his information and experience in the formation of this system of laws.

The Code Napoléon contains all the general principles of civil and municipal law. Its provisions embrace all the various relations of men in society, their rights, duties and obligations, both in respect to the public authority, and to each other. It secures the enjoyment, and regulates the descent and transfer of property; recognises the principles of equity in the construction of contracts and engagements, and provides for their faithful performance.

The Commercial Code provides for the application of the general principles recognised in the Code Napoleon, to the numerous and diversified cases arising out of the operations and transactions of trade. It is, therefore, in many respects, conformable to the spirit of the commercial laws of other civilized nations, though it differs from them in some important points, and contains many new and highly valuable provisions. Such a body of mercantile law, condensed in so small a compass, its various parts arranged and exhibited in so able a manner, is not to be found in the jurisprudence of any other nation. The commercial law of England exists not in any definite and distinct form. It must be sought in the voluminous pages of the statute book, and still more in the countless volumes of elementary treatises and reports of adjudged cases, which encumber the library, and distract the mind of the judge and the lawyer. Founded originally upon usage, it has, from time to time, received partial additions and alterations from acts of parliament; and derives its force and authority much less from positive regulations, than from the numerous, and sometimes contradictory, decisions of the courts. The *Lex Mercatoria* of England, though equally the law of the land, forms no part of what is called the *common law*. The former has borrowed most of its principles, and many of its rules, from the commercial regulations of the continental nations, and from none more than from those of France, whose celebrated ordinances and enlightened authors have contributed more to improve and enrich the commercial jurisprudence of England,



than all the statutes of her parliaments or the writings of her jurists. The treatises of Pothier, of Jousse, of Domat, of Emerigon and of Valin, are deservedly held in the highest estimation in Great Britain ; and neither national antipathy nor inveterate prejudice has been able to resist the influence of these luminous and masterly productions. Even the ordinances of Louis XIV. have extorted the highest encomiums from the bench and the bar of England ; and are cited as authority in almost every commercial question of importance, before the courts of that country.

Sir William Jones, one of the most accomplished men of modern times, a lawyer, a judge, and a scholar ; skilled in every science, and learned in almost every language, has done ample justice to the writings of *Pothier*, the most distinguished of the French jurists. He has strongly recommended the study of his works to the English lawyer, as being well calculated to enlarge his legal knowledge, on subjects involving many of the most important principles of English law. Equally above the narrow prejudices of national jealousy, and the groundless fears of ignorance, or the perverseness of obstinacy, he has, with his usual candour and eloquence, paid a just tribute of praise to the merits of the civil law : and completely refuted the absurd and ridiculous notions, once entertained in England, against the study of that noble system of jurisprudence.

The common law of England, which we have borrowed from that country, with her general system of jurisprudence, undoubtedly contains many excellent

principles, but its provisions, for the most part, originated in the doctrine of the feudal system, and still bear the rude stamp of its character. Adapted to a confined and unlettered state of society, in which commerce was scarcely known, or the arts cultivated, it embraced, in its early stages, but a limited range of human action; and is indebted to the improvement of modern times for much of that wisdom and purity which it now exhibits. On this subject I cannot forbear quoting a passage from a very learned and eloquent opinion delivered by Judge Waties of South Carolina, in a libel case lately before the court of appeals of that state: it is in the following words:

“ It is a great error to look to the first sources of the common law for the purity of its principles. The best and purest of these were of later accession. The sources of the common law (except such parts as were derived from the laws of Rome) were shallow and muddy. In its downward course, it has been continually filtered and enlarged by passing through courts of increased wisdom and science; and it is owing to these continued filterings and accessions that we see it as it now is, a clear, wholesome, deep, and majestic stream.” See *Hall's Law Journal*, No. 1. 2d Series. *The State v. Thomas Lehre*.

Though the liberal and enlightened spirit, the just and rational views of modern times, have contributed so much to the improvement of the English law; yet the system is far from being adapted, in all respects, to the prompt administration of justice, or to the genius of our government.

It is, therefore, susceptible of melioration. Though we may fondly cherish the sacred and venerable principles of the common law, something may yet be learned from the laws of other nations, by which we may impart light and efficacy to those principles, and extend their operation to the various pursuits of life, in the present state of society.

Let us, then, throw off the shackles of antiquated rules and precedents, unfounded in reason and truth, and diligently endeavour to ingraft into our system of jurisprudence those pure principles of equity and justice, which give dignity to law and security to property; which, while they strengthen the bonds of civil society, present a simple, sure, and prompt mode of redress, against the infraction of obligations and the violation of private rights.

In an age of science and of letters, whatever the wisdom and the genius of any nation has produced, which may contribute to private happiness or public order, is entitled to credit and consideration.

Whether it be the Code of George or Napoleon, of Frederick or Alexander, which is offered to our notice, why should we not equally examine its principles and provisions? Some new discoveries, some important regulations, may be suggested, which, so far from being incompatible with our own laws, may greatly tend to enrich and invigorate them. Who will venture to affirm that our jurisprudence has already attained perfection? Who will pronounce it to be fully adequate to the calls of justice and the wants of the community?

If law be indeed a moral science, its principles should not only be pure, but its rules precise and easy of comprehension : its object the speedy, certain, and equal distribution of justice. That such is the wise and benevolent intentions of providence, no one can doubt ; and we may confidently indulge the hope, that a period will yet arrive, when the progressive march of reason, wisdom, and learning, will give to jurisprudence that exalted rank in the general system of ethics, to which its important object and extensive operation justly entitle it. We may then with truth affirm, with the pious and learned Hooker : “ Of LAW, no less can be acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power.” *Hooker's Ecclesiastical Polity, end of the 1st book.*

JOHN RODMAN.

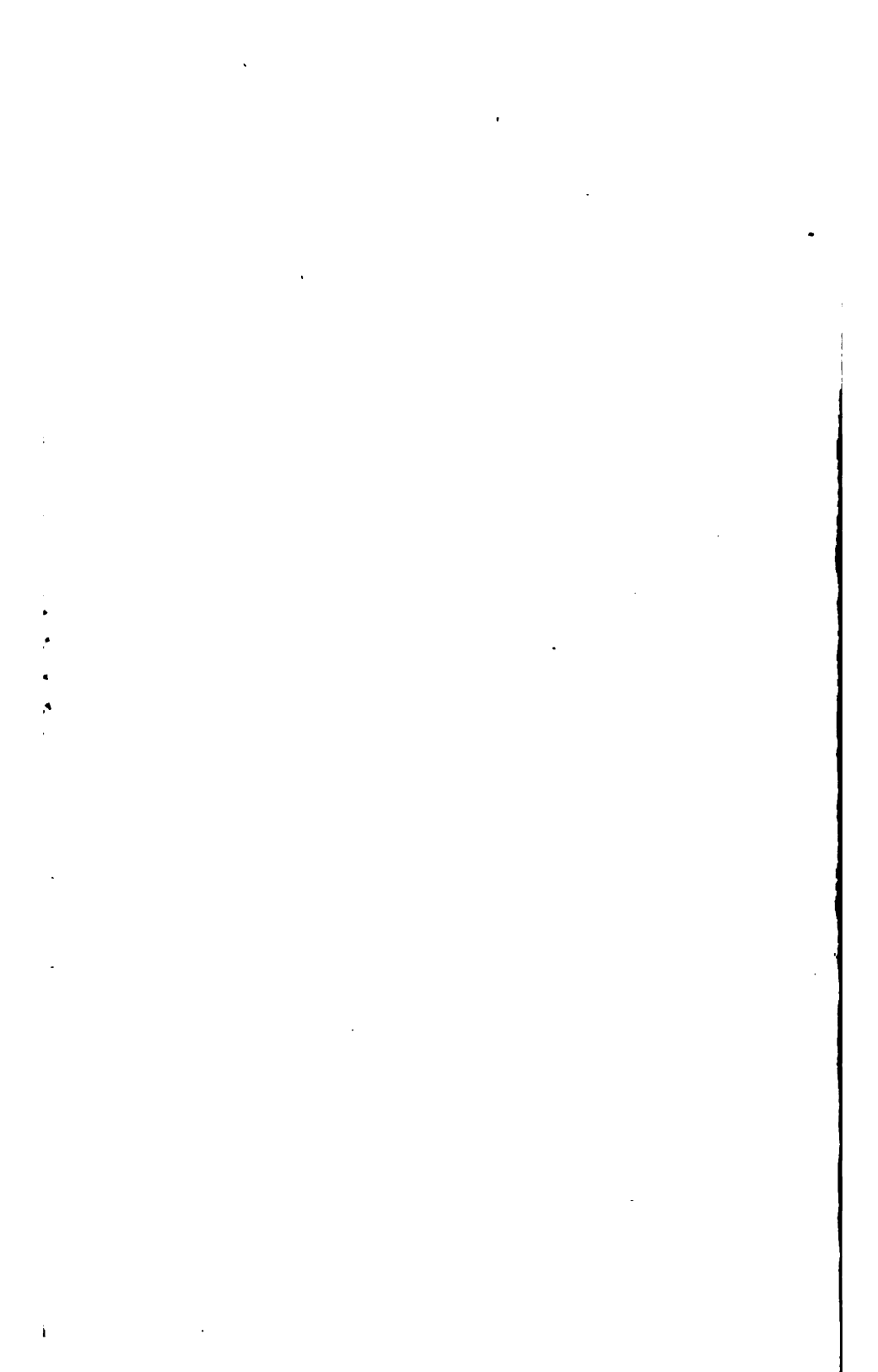
*New-York, 24th March, 1814.*

**ERRATA.**

**Page 5, line 24, for 1812 read 1802.**

**Page 9, at the end of the 7th line insert a semicolon instead of hyphen.**

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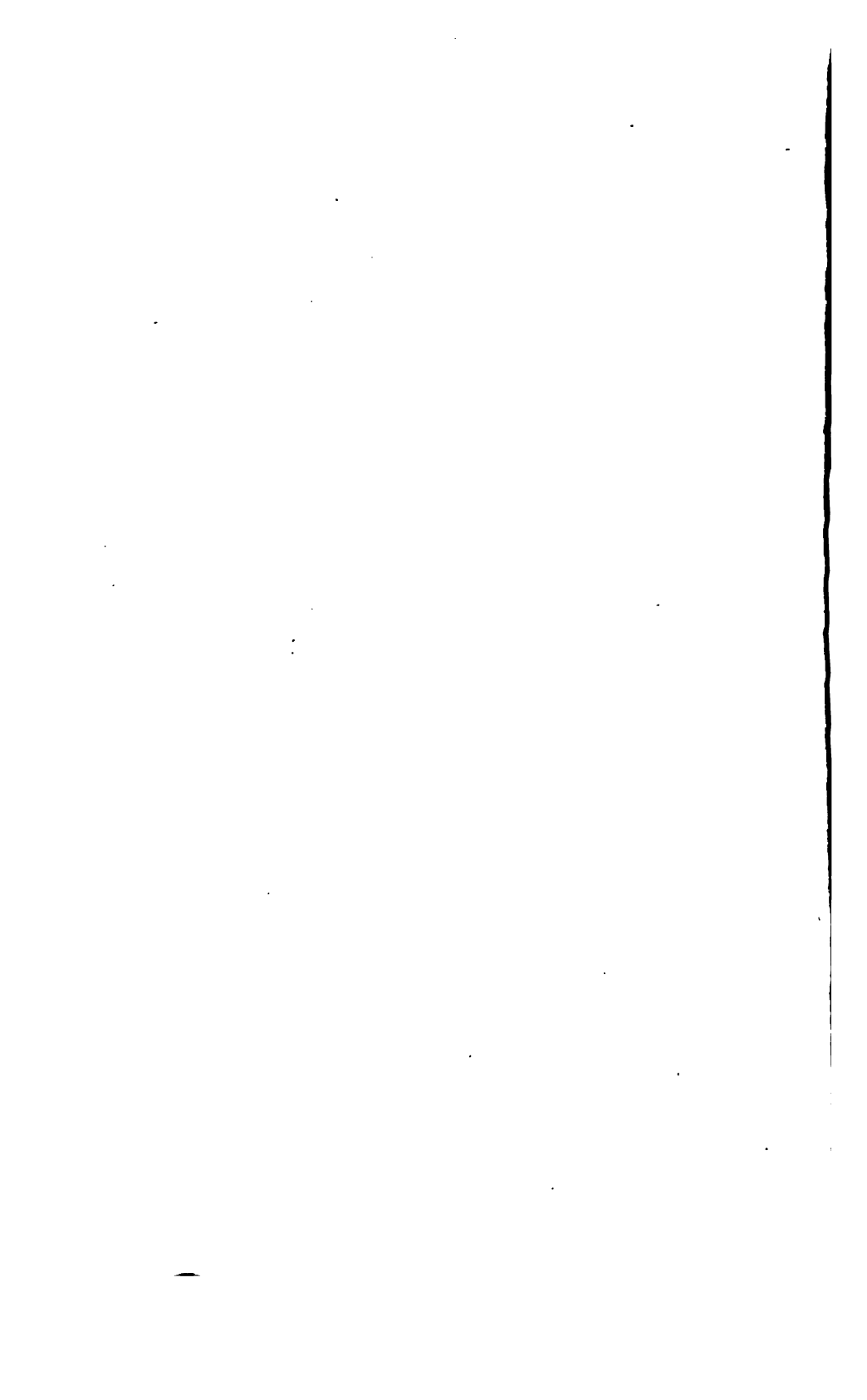




**MOTIVES**

**OF**

**THE COMMERCIAL CODE.**



# EXPOSITION OF THE MOTIVES

OF

BOOK I. TITLE I. TO VII.

OF

## THE COMMERCIAL CODE.

*Presented to the Legislative Body, by Messrs. Regnaud, Jaubert,  
and Real, Counsellors of State.*

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SITTING OF THE FIRST SEPTEMBER, 1807.

GENTLEMEN,

A CENTURY and a half have elapsed since an able minister\* laid the first foundations of the commercial riches of France. He directed the activity and the genius of a nation already great, though only in the dawn of her power, towards manufactures, then scarcely known; towards the arts, almost entirely neglected; towards maritime adventures, abandoned to our neighbours, even along our own coasts; towards the vast operations of commerce with the two worlds, the monopoly of which Holland and England had usurped.

It was not enough to have unfolded the general principles of commerce; to have, by the creation of great companies, offered to individuals examples to follow; to have directed national industry towards the chymical working of raw materials, indigenous or exotic; finally, it was not enough to have impressed the nation with a strong impulse: it was necessary to establish rules for the actions of individuals; to bring within the reach of every merchant the fundamental principles of the profession which it was desirable should flourish. It was necessary to deduce from these principles their most important consequences, and to apply

\* Colbert.

them to daily transactions; it was, in short, necessary to give to foreign and domestic commerce a civil legislation adapted to every occasion.

The commercial ordinance then appeared, which a few years after was followed by the ordinance of the marine.

Assuredly, France will always count among her noblest monuments of legislation, those two works, prepared and published under the influence of the genius of Colbert: happy results of the study of the most able civilians, and of the experience of the most distinguished merchants.

But those laws, gentlemen, were no longer suitable or adequate to the commerce of the French empire. . . .

Since their publication, the superficial territory of France has been almost doubled; entire states in the south, vast provinces in the north, have been added to the extent of its maritime frontiers, to the number of its rivers and navigable canals, to the immense variety of its agricultural productions, to the continually increasing diversity of the products of its industry.

On the other hand, at first, under the reign of the late kings, afterwards, during the interregnum, which has been called the revolution, and finally, under the dynasty which now arises to efface all the glory and repair all the misfortunes of these latter periods, the morals of the nation, in general, the commercial morals, in particular, have undergone great changes; but they are not yet confirmed.

It is of great importance to seize them at this moment of oscillation, to fix them in useful and honourable habits; to direct them, we may venture to say, to bring them back to that loyalty, that good faith, of which our great commercial places were the ancient cradle, and of which they still preserve many noble models.

It is of great importance to form into one common system, the usages and the jurisprudence of the metropolis and the provinces; to banish the influence of those rules and decisions emanating from the parliaments, and which constituted a second legislation in the bosom of the primary one; to efface the traces of regulations

established by local customs, by municipal laws, the first benefit, and the last inconvenience, of our ancient civil legislation.

It is of great importance that the commercial laws of France should be equally adapted to the traffic in articles of consumption for the great cities, to the mercantile speculations of vast emporiums, to the trade in the products of extensive manufactures, to the immense navigation of great ports, to the active coasting trade of the smaller harbours, to the linen merchants of Courtray, Ghent, Brittany, the Maine and the Loire, to the silk manufacturers of Genoa, Lyons and Tours; to the woollen weavers at Elbenf, Sedan, Louviers, Verviers, and to the cotton manufacturers at Tarare, Rouen, Alençon, Paris, and Troyes.

It is, in short, of great importance that the commercial code of the French empire should be built upon principles which will prepare it for a universal influence, upon principles which will be adopted by all mercantile nations, and which are in harmony with those great commercial habits that embrace and govern the two worlds.

Scarcely had the emperor held the reins of government, and already he felt and developed the truths which I have just traced. From the 13th of Germinal, in the year 9, (2d of April, 1801,) a commission was named to prepare a plan of a commercial code; and in less than a year after, on the 13th of Frimaire, in the year 10, (3d of December, 1812,) the members of that commission, Messrs. Vignon, Boursier, Legras, Vital-Roux, Coulomb, and Mourgues, presented to the government the useful fruit of their labours, which entitles them to the public gratitude.

But these labours were only the thoughts of a small number of men. His majesty wished to be surrounded by other lights; he desired to collect, as it were, the general opinion of merchants and of magistrates, and, by his orders, the plan was sent to the councils, or chambers of commerce, to the commercial tribunals, and to the courts of appeal.

They have all furnished their observations, and the framers of the code, after having made an analysis of that voluminous

collection, have enriched their first labours with some useful corrections and important changes.

Thus presented to his majesty's council, the commercial code was there discussed by his order, whilst he was bearing his triumphant eagles to the centre of the north.

Victory presented the Code Napoleon to the liberated Poles, and wisdom directed, from the banks of the Vistula, the formation of a new law destined to give the commercial code to Europe.

The framing and the publication of this code occupied so much the thoughts of his majesty, its principal provisions were so constantly present to his mind, that, the next day after his return to his capital, he wished to submit it to a new discussion in his presence, to a sort of general revision; the influence and the results of which we shall make known to you, gentlemen, when we enter upon the successive examinations of the divers titles we shall bring you.

The first framers had divided the commercial code into three books only, the last of which treated of failures and of commercial tribunals: by separating the third book into two parts, the commercial code will be presented to you with four great divisions.

The first contains the laws which regulate commerce in general.

The second, the laws peculiar to maritime commerce.

The third treats of failures and bankruptcies.

The fourth, of the competency of the tribunals for commercial affairs, and the mode of procedure before them, in the various cases which may arise.

Already, gentlemen, you may perceive that this classification gives to the new commercial code an important advantage over the ordinance of 1673.

In effect, the merchant was obliged to seek in the ordinance of the marine of 1681, all the rules relative to maritime commerce, which he did not find in the ordinance of 1673.

They were blended in the former with provisions, some of which relate to public administration, as the instruction and examination of navigators; others to the military organization of the marine, as the rights and privileges of the grand admiral; they were mixed with objects, some of which appertain to the civil code, and were ordained at the time of its formation, as the title relating to testaments made at sea; others belong to the police, as the station of ships in the harbours and ports; or to public policy, as the right of entering, remaining in the same, and of importing foreign productions.

In the code, such as it will be submitted to you, gentlemen, every merchant, commercial agent, or broker, will find the whole body of legislation which concerns his profession. He will find the rules of personal obligations, of mutual contracts, rules for cases in which personal and reciprocal obligations are not fulfilled; that is, when failure or bankruptcy has taken place: finally, the rules of jurisdiction, of competency, and of practice.

At another time, very soon, perhaps, gentlemen, the other provisions of the ordinance of the marine may be submitted, in their turn, to a useful revision. Soon the avenging genius of the laws of nations on the continent will also avenge the laws of nations on the ocean; and the world, at least the French empire, will be indebted to him for the benefit of a navigation act, which shameless ministers will no longer suffer to be violated by a piratical people.

In the general system of the law, gentlemen, you will find that strict obligations have been imposed, severe rules established, rigorous punishments denounced, and a restriction of some rights which were granted by the Code Napoleon.

But this legislative austerity has been deemed a necessary counterpoise to the relaxation of morality among the trading classes.

Previous to the year 1789, independently of the three great orders into which the French people were classed, each class

was still subdivided by degrees, ranks, professions; each fraction of the great society had its grade marked, its situation assigned, its circle traced by the law.

But, at that period of glory and of misfortune, when the reason of the many unsuccessfully endeavoured to accomplish what the will of a single person has since effected without effort; at that period of the humiliation and the vengeance of every vanity, all classes were debased or elevated to the same standard, the ties of every community were severed, the limits of every profession were effaced. The French people at first thought themselves equal in the law; they soon felt themselves equal in misery, and finally became equal in terror.

Then each citizen, isolated by fear, and urged by want, sought the means of subsistence in the only profession which could afford it, in those times of nominal and individual riches, of effectual and general poverty.

Every body was engaged in trade; every house became a warehouse; every ground floor, opening on the street, became a shop, which, set up on hopes, and ornamented at great expense on credit, was soon closed with scandal by bankruptcy; and thus alternately succeeded, ignorance or fraud, imposition or improbity.

Since society has been reorganized upon a new basis, since order has been re-established, every one has either resumed his former state, fixed himself in the profession which he had embraced, or has embarked in a new career; in short, the citizens of their own accord have formed themselves into classes under the insensible impulse of the hand which directs them.

However, the traces of the evil are not yet effaced, its sources are not yet dried up.

Wealth has not yet descended to its just estimation, honour has not yet remounted to its real worth.

Order and economy, these two sources of prosperity in a commercial house, do not yet generally prevail, and are too little observed, particularly in large cities. The splendour of



warehouses or of shops, of dwellings, or of persons, is still the ensign of too many tradesmen, and supply the place of that scrupulous vigilance, that modest probity, that strict fidelity, which formerly made the buyer a customer, the customer a friend.

Merchants have been seen without books, books without accuracy and regularity; and too often books in which the apparent accuracy of a year was only the effective fraud of a week; writings arranged in order to mask dishonesty towards creditors, or to hide improbity from justice.

Bankruptcy has been considered as one of the means of growing rich; women have been found creating themselves opulence, at the price of the ruin of their husbands' creditors; and by a concerted separation of property, securing in advance the means of preserving to a single person the enjoyments of a guilty luxury, at the expense of the misery of many families.

And even the morals of society have been, and still are, too indulgent to such conduct; the laws are an insufficient barrier against misdemeanors so grave: his majesty has observed it with regret, and with grief; he has been desirous of administering a prompt and efficacious remedy to the evil.

Hence, gentlemen, the severity of the provisions which you will find in the commercial code, in regard to the keeping of books, the separation of property between husband and wife, the indirect advantages afforded to married women, the failures even which may be acknowledged innocent, the bankruptcies occasioned by imprudence, those which fraud has produced.

Probity re-established, will applaud the rigour of the rules which are about to be adopted; dishonesty will be alarmed at them. Some will at first perform their duties from fear, who soon after will submit from habit, and end in finding pleasure in fulfilling them. Good morals will revive in the bosom of good laws.

These are the observations, gentlemen, that we have thought necessary to offer to you, upon the general classification of the subjects; upon the collective matter of the commercial code; and upon the principles which have governed its formation.

We bring you to-day the seven first titles of the first book; the other titles will speedily be submitted to you, and a final law will fix the period when the whole code is to take effect, no part of which will be in force separately or successively.

At the commencement of the first book, and under the title of *general provisions*, the framers of the code had laid down certain rules and definitions, some of which have appeared to be purely theoretic and superfluous; others have been deemed more suitable to a different place.

Thus we have not thought it necessary to say, *that in France every body has a right to carry on trade*, but truly to determine the character by which a merchant or trader is to be recognised, to pronounce what persons may, and how they can become merchants; we have therefore made the first title relate to *merchants*.

We have immediately afterwards, in order completely to establish the foundation of commercial jurisdiction, determined what acts should be deemed commercial.

But their nomenclature has been ultimately transferred to the title of *competency and jurisdiction*.

As this nomenclature will henceforth be applied to those who follow the profession of a merchant, and to mercantile transactions, by whomsoever they may be practised; as the jurisdiction will result, at the same time from the character of the person and the nature of the transaction, the law will be clear in its definitions and easy in its application.

In speaking of merchants, it was highly necessary to notice married women and minors.

The ordinance of 1673 had bestowed too little attention on these two classes of individuals. A minor and a woman might too easily hazard, the one his own fortune, the other her's and at the same time that of her husband.

Both of them are now prohibited from engaging in trade unless authorized, the minor by his parents, if they be still living; the wife by her husband, even though she be separated in property from him.

Neither of them, then, the minor nor the married woman, can any longer pledge or sell their real estate, except in the case of the wife, where the property shall have been stipulated as dotal; a stipulation which will preserve to her the privileges established in the Code Napoleon.

The second title treats of *the keeping of books*, rules for which were established in the third title of the ordinance of 1673.

Those which we prescribe are more strict, and at the same time more extensive.

The ordinance enjoined on the merchant only to insert on his journal, *his traffic, his bills of exchange, &c.*

But we have perceived that this is not enough; the conscience of the merchant ought to be entirely laid open in his books; there the conscience of the judge ought always to be sure of finding it.

Much has, then, been required from the merchant on this essential point.

The eighth article of the code directs him to enter, 1. All that he receives and pays, of whatever nature it may be; and, consequently, even the marriage portion of his wife, or the produce of inheritances, donations; in fine, sums arising from causes unconnected with *trade*.

2. Every endorsement of a bill; for these endorsements have often constituted a considerable part of the debts payable of an insolvent, without being entered on his books, and without affording any traces of their existence, except in the fugitive memorandums of brokers, or among the uncertain notes of the operations and fraudulent circulations which are practised.

The inventory prescribed by the ordinance of 1673 was an isolated instrument which was not subject to transcription on a register, and was to take place only every two years. It is to be made in future every year, and its authenticity will be ensured by a copy on a special register.

The third title treats of *partnerships*.

The ordinance seems to have recognised only two kinds: a

general partnership, and a *commandite*, or limited partnership, in which one partner furnishes the capital, and the other the labour and attention; nor were the rules in regard to the latter kind well established.

The framers of the present code had added two others: a partnership by shares, and a partnership in participation or joint concern, and thus four sorts were recognised.

We have reduced them to the three first, conformably to the Civil Code, (Book III. Tit. IX.) because a partnership in participation is only a transitory act, a contract which relates to a single object, and does not rest upon the same basis, nor can it have the same results, as the three other kinds of association.

We have been particularly attentive to characterize exactly the divers contracts of partnership.

The definition of a general partnership, or collective name, has presented few difficulties; it is universally known and adopted.

But if it be important to favour the *commandite*, or limited partnership, which permits every proprietor of capital to connect himself with the chances of commerce; which gives alimient to circulation; increases its activity; multiplies the social ties by a community of interest between the landholder and the manufacturer, between the capitalist and the shipper, between the first personages of the state and the most humble tradesman; it is of importance to prevent fraudulent speculations audaciously made, under an unknown name, by means of which the most hazardous commercial operations of banking or stockjobbing were undertaken, and when not crowned with success, relief was found in the obscure dishonour of a premeditated bankruptcy.

The prohibition to the *commanditary* (dormant partner) of all agency in the transactions of the association, under the penalty of absolute responsibility, the publication of the partnership agreement, in order that the capital furnished or promised by the *commanditary*, and, consequently, the extent of the resources and credit of the partnership may be known, are the principal rules established by the law.

Anonymous partnerships, or those by shares, have likewise engaged the attention of the framers of the code.

They afford the means of encouraging great enterprises, of drawing foreign capital into France ; of associating mediocrity, and even poverty itself, with the advantages of great speculations ; of adding to public credit, and to the circulating medium in commerce.

But too often associations badly formed in their origin, or badly managed in their operations, have compromised the fortune of the stockholders and the directors, momentarily injured general credit, and put in jeopardy the public tranquillity.

It has therefore been ordained that no association of this sort shall exist, but by virtue of a public act, and that the intervention of the government shall be necessary to attest previously upon what foundation the operations of the association are to be conducted, and what consequences shall ensue.

With these precautions, together with those of publicity, common to the three kinds of partnership, the directors of anonymous partnerships, or those divided into shares, will conduct the business in security to themselves and to the stockholders ; they will no longer be exposed to those actions of guaranty, those prosecutions of responsibility, which have troubled the repose, destroyed the ease, and ruined the credit of the most respectable men.

If, in partnerships thus organized, subject to precise rules, which afford every means of arriving at utility, every security against evil, disputes should arise, the law takes from the tribunals the cognizance of them ; it orders a decision by arbitration, and independently of the provisions in regard to arbitration contained in the code of civil procedure, it determines a particular mode which ensures a prompt adjustment of the matters in controversy, and thus exhausts the source of discord between individuals or families.

The fourth title, which treats of the *separation of property* between husband and wife, adds useful and rigorous provisions

to the precautions already taken in the civil code, art. 865. and following.

But the civil code only provides for the solemnity, the publicity, and the execution of the judgment of separation on the real estate since the marriage.

The commercial code also provides against what may happen, if a person already in trade marries with separation of property, or under the dotal regulation; and if a man already married with separation of property, or under the dotal regulation, afterwards enters into trade.

It requires, in these two suppositions, the notice and publication of the marriage contract: it enjoins the notary who pens, or is privy to the contract, to fulfil the formalities prescribed by the law.

Finally, it subjects to the same regulations every merchant who may be in either of the two situations at the time of the publication of the code, and allows a year to comply with the requisite formalities.

Thus the fraud of preconcerted separations will disappear; thus will cease that division of interest, that sentiment of selfishness, which renders women strangers in the house of their husbands, makes them indifferent to the prosperity of their affairs, and sometimes goes so far as to change them into destructive vampires, who, in the bosom of a flourishing establishment, to satisfy a shameful cupidity, or gratify a ruinous luxury, exhaust, little by little, that capital which was destined to vivify a commerce reclining for want of aliment, sinking with shame, or expiring with scandal.

After having taken notice of merchants, and the regulations which the public safety imposes on them, the code proceeds to treat of the *agents employed in commercial transactions*.

Already a law has given sanction to the existence of *exchange agents and brokers*, intermediaries always useful, sometimes necessary, in commercial places and seaports.

The fifth title of the first book adds to the provisions of the

law already in force ; and the sixth title treats of factors, of whom no previous law had yet spoken.

And, in the first place, the functions of exchange agents and brokers are more particularly laid down and limited, their duties more positively enjoined.

Ship brokers and interpreters, created at first by the ordinance of the marine, are circumscribed within their proper functions, from which brokers for land carriage are henceforth excluded, these latter having, in two places, been associated through mistake with the former.

Exchange agents and brokers are compelled to keep books, and to make entries of all their operations:—Secrecy, often demanded by prudence, but oftener required by dishonesty, will never be betrayed by indiscretion: but it may be unveiled by justice.

No exchange agent, nor broker, is permitted to carry on business on his own account. Thus breaches of confidence, undoubtedly very rare, but the afflicting examples of which have given foresight to the legislator, will cease.

No exchange agent nor broker can be a guarantee for the execution of the bargains made through his intervention. Thus no exchange agent nor broker can become bankrupt without being culpable, and exposed to dishonour and to punishment.

Independently of these rules, applicable to the general transactions of commerce, the government will make others for the negotiation of public stock, by particular regulations, which will add to the benefit of the law, and remove every uncertainty in the tribunals on this matter.

The title of *agents and factors* regulates their duties and establishes their rights; it confirms the most approved usages, fulfils the wisest wishes of merchants.

A factor who receives goods may in future with security make advances on those goods, if he has them in his warehouse, or if he has the bills of transportation, or of lading. The law ensures him an equitable lien, and by this means favours the cultivator,

the merchant and the consumer. Agents for transportation by land and by water, and common carriers will find in the second and third section of the same title, all the principles which are applicable to them, and the tribunals, precise and universal rules, instead of a jurisprudence doubtful and various.

Finally, gentlemen, the seventh title, the last of those which we offer at this moment, determines the forms and the manner in which sales and purchases may be commercially established.

It removes the uncertainty which existed in regard to the credit of the sole testimony of an intermediary commercial agent, of an exchange agent or broker; it invests the discretionary authority of the tribunal with the power of seeking the truth in the correspondence, in the books of the parties, and even, in all cases, and whatever may be the amount in controversy, in the admission of evidence by the opposite party.

I have now, gentlemen, rapidly traced the general principles upon which the whole code has been framed; you must have perceived that the particular provisions which I have just analyzed are the immediate or remote consequences of these principles: those which will be successively presented to you will be derived from the same source; and France will have another code, which, like the Code Napoleon, she may show with pride, and bestow as a benefit to her neighbours and her allies.

She may do so, because the second code, like the first, will bear the impression of the genius under whose inspiration it was conceived, discussed, and completed; because there will be found in it that necessary order, that sentiment of justice, that respect for every kind of property, which characterizes all the legislative acts of the government, and of the administration of his majesty.

The gratitude of the French people will not forget that it was in the bosom of military glory the most dazzling, that his majesty was preparing the monuments of another and a more durable glory, and, although less brilliant, more dear perhaps to his heart. They will not forget that on the field of battle, where



his august head, exposed to so many perils, was deciding the fate of combats and the destinies of Europe, his majesty, at the same time, was meditating laws, planning institutions for his brave and good people, who, equally proud of having a monarch so great in the eyes of the world, and so good for his subjects, now wish to praise him only by their love, and to reward him only by their happiness.

# EXPOSITION OF THE MOTIVES

OF

BOOK I. TITLE VIII.

OF

## THE COMMERCIAL CODE.

*Presented to the Legislative Body, by Messrs. Bégouen, Fourcroy, and Béranger, Counsellors of State.*

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SITTING OF THE SECOND SEPTEMBER, 1807.

GENTLEMEN,

WE are charged by his majesty the emperor and king, to present to you Title VIII. of Book I. of the project of the commercial code: this title relates to *bills of exchange and promissory notes*.

The word, *bill of exchange*, cannot be pronounced without immediately connecting itself in our minds with commerce; without our reflecting upon its influence on the happiness of mankind, the prosperity, the wealth, and the power of states.

Commerce, by the distribution of labour, combats idleness, that corrupter of morals; it encourages industry by furnishing raw materials for manufactures, and by procuring the sale of their products; it gives activity to reproduction by promoting consumption, and thus makes agriculture flourish; it has carried civilization to all parts of the globe, and bound all the nations of the earth to one another.

Commerce, the importance of which profoundly felt, has dictated to the greatest man in history, to the hero-pacifator of Europe, these memorable words; "*that a general peace is the object of all his prayers; but that he desires France to have commerce and colonies.*" Commerce, I observe, is indebted to bills of ex-

change for the greatest part of its progress, and for the immense developments, which, for these several centuries, it has exhibited.

In times even when people had advanced so far as to give to the precious metals the form of money, the charges and risks of transportation indispensable for purchases and exchanges abroad, imposed heavy fetters on the commerce of the interior, and rendered it almost impracticable with foreign nations.

Bills of exchange were afterwards invented.

This event, which forms in the history of commerce an epoch almost equal to that of the discovery of the loadstone and of America, has removed all those obstacles. Bills of exchange have liberated moveable capital; they have facilitated its circulation and disposition; they have created an immense sum of credit. Since that period commerce knows no other bounds than those of the world.

Whether Europe be under obligations for this fine conception to the commercial genius of the Jews, driven out of France and refuged in Lombardy, or that we must attribute it to the Florentines, expelled from their country, by intestine divisions, and retired into France; this contract, so concise in its form, so energetic in its expression, so simple in its object, so fruitful in results, holds the first rank among instruments of credit.

By this character it has engaged the attention of the most distinguished civilians.

Their sagacity has been exercised in the scrupulous examination of its essence. In the analysis which they have made of it, they have found united the contract of *mandate*, (bailment,) and that of exchange or of sale.

From the nature of these contracts are derived all the principles and rules which legislation has established, in relation to bills of exchange.

These principles are,

That he to whose order the bill is drawn, transfers the property by an endorsement regularly made, without any need of giving notice of the transfer.

That the drawer and the endorser are bound as sureties for the payment of the bill when due ; and the holder is reciprocally obliged to present the bill for payment at its maturity.

That the holder who has, at the maturity of the bill, in default of payment, done all the acts prescribed by the law, may have recourse for reimbursement, to the endorser, to the drawer, and also to the subscribing sureties, if there be any to the bill; all the signatures to the bill of exchange, under this reciprocal obligation, being jointly and severally responsible, the one for the other, to the amount of the bill.

All the commentators have also thought, that it is the essential character of a bill of exchange that it should imply a remittance of money from one place to another, that is to say, that the bill ought to be payable in another place than that in which it is drawn.

The ordinance of 1673 did not textually determine this question, but the unanimous opinion of the jurists had settled the jurisprudence on this point ; and although several chambers and tribunals of commerce, and even some courts of civil law, had expressed a wish to see this principle yield to considerations of advantage, of convenience, and of facility for internal commerce, it has been deemed, on the contrary, necessary to give sanction to it by a provision in the text of the present code. It has been thought that this contract, fortified by the law with such special protection, ought to have certain forms, and a character which will eminently distinguish it from all other negotiable paper.

I ought, gentlemen, to mention to you that a few changes have been made in the ordinance, which were indicated by the experience of a century, and solicited by justice, or the interests of commerce : in the first place, you will remark that which relates to the provisions of article 16. of title 5. of the ordinance of 1673.

That article restored the negligent holder to his remedy against the drawer and endorser, which had been declared to be

forfeited in article 15. and consequently subjected the endorsers as well as the drawer to prove, in case of denial, that those on whom the bill was drawn had funds in hand when the bill became due.

It results, on the contrary, from the provisions of article 117. and 168. of the project of the law now submitted to you, that in case of protest tardily made by the holder, the forfeiture of his remedy against the endorsers is fatal and without relief.

In order to establish the justice of this provision, it is sufficient to consider, that if on the one hand the drawer contracts an obligation to have funds in the hands of the drawee, when the bill becomes due, the holder on his part contracts not less rigorously to present the bill at that period for payment.

From the union of these two obligations the rights of all the parties to the bill are derived.

If the protest has been made in due time, the holder of the bill may have recourse to the endorsers and the drawer, in the mode and time prescribed.

If, on the contrary, the protest has been tardily made, the holder has no longer any right of action either against the drawer or endorsers; his remedy in this case was expressly taken away by article 15. of the ordinance.

However, it is highly just that the holder should be relieved from this forfeiture of his remedy, in regard to the drawer, if the latter do not prove that the drawee was indebted to him, or had funds in hand belonging to him, at the time the bill became due.

Nothing is more just in regard to him; for the drawer in delivering the bill of exchange receives value for it; he enters into a personal obligation to see that funds be ready in the hands of the drawee to meet the bill when due. If he has not done so, the holder has done him no injury by the delay of the protest; he would, on the contrary, profit most unjustly by depriving the holder of his remedy; and the amount of the bill of exchange, which he would then have received, without giving any value in return, would be, on his part, a real robbery.

It is not the same with respect to the endorsers; for if it be just, if such be the text and the meaning of the law, that the drawer who proves that he had made provision to meet the bill be discharged, the rigorous and legal consequence is, that the endorsers would be exonerated without being compelled to make this proof; because each of them gave value for the bill in taking it.

Because the joint and several responsibility of the endorsers with the drawer expires on the day when the holder is in default, for not having fulfilled his express obligation of presenting the bill when due.

Because it ought not to be in the power of the holder, by his act, to render the condition of the endorsers worse, by prolonging indefinitely the time of their guaranty, a prolongation which would bring upon them an increase of risk, since, during this time, their prior endorsers, and the drawer himself, might become insolvent.

Because it would be unjust that the endorser, who has already given value for the bill, who has fulfilled all his obligations, should be liable to pay the amount of it a second time, whilst the holder, alone in fault, should be indemnified.

Finally, because there is no just grounds to restore, in prejudice to endorsers, the title of the holder, barred by the forfeiture of his remedy, and to revive in his favour, the joint liability of the endorsers, extinguished with the term of their engagement.

A remarkable provision again in the new law is, the abrogation of the days of grace, of favour, of usage, and of local custom, for the payment of bills of exchange.

The ordinance of 1673 had granted ten days to the holder in which to make his protest for non-payment; but a declaration of the king having given to the acceptor the right of demanding these ten days, the consequence was, that they had become an absolute extension of the term of payment expressed in the bill, so that the holder could not legally have the bill protested till the last of the days called days of grace. Thus, the real maturity of the bill was fixed on this last day, instead of that expressed in

the bill. There was then this discordance understood between the expression and the intention of the contracting parties.

No advantage resulted to any body from this regulation. The holder, as well as the acceptor of a bill of exchange, drawn at sixty days' date, knew alike, the one, that he was not to present it, the other, that he was not to pay it, or to subject himself to its protest, before the *seventieth* day. This kind of deception in the expression of the bill was without an object, and it was an error, though it was the opinion of some commentators that these pretended ten days of grace were advantageous to commerce, and equally favourable to the holder, the drawer, and the acceptor or debtor of the bill. In fact, nothing was more insignificant, more useless to the one as well as to the other.

By article 161. the law requires the drawer to demand payment of the bill the very day it becomes due, according to its tenor; and by article 162. that the protest in default of payment be made the next day, and if this next day be a legal holyday, on the following day.

Several tribunals and chambers of commerce have expressed a desire that three days should be granted, in which to make the protest. Whatever may be the weight of their opinion, and the confidence it inspires, it has been deemed proper to resist this wish, which has appeared to be less the fruit of reflection than of habit and the dominion of words.

In effect, it has just been shown that there was not really any days of grace in which to make the protest, since they rigorously belonged to the payer; that the very day of the actual maturity of the bill was the only day on which the protest must have been made. The new law, which ordains that the protest shall be made the next day, grants then a day more, consequently, a greater facility.

A decisive consideration, besides, is this, that it is of singular importance to commerce that the day of maturity, and that in which the protest must be made, be definitively fixed, and not subject to variation at the will of the holder.

If the latter could, at his pleasure, narrow or enlarge the time

of maturity, by the right of making the protest several days sooner or later, the drawer and the endorsers would often be exposed to become the victims of the complaisance which he might have had to defer the protest; or rather usage would not fail to establish it as a regulation not to make the protest till the last day, and then the ancient system would revive.

Article 145. of the project presents an essential regulation on a point which the ordinance of 1673 had left to the common law, and on which the jurisprudence of the tribunals had varied extremely.

It has appeared necessary that the legislature should pronounce upon it.

This article decides that he who pays a bill of exchange when due, and without objection, shall be *presumed* legally discharged.

Several decisions of the courts had adjudged differently. Celebrated jurists were divided in opinion.

Pothier, Jousse, and others, who were attached to the principle, that no person can assign to another a greater right than he has himself, have maintained that the payment is not valid, if it be not made to the real creditor; that he who should pay on a false acquittance, or a false order, would not be discharged in regard to the real proprietor of the bill.

But are these principles, these rules of law from which it is not permitted to deviate in ordinary civil affairs, applicable here?

A bill of exchange, that species of money stamp in the mint of commerce, launched into general circulation, which visits with such great rapidity so many cities and countries, which becomes in so short a space of time, the property of so great a number of persons, whose names and signatures are unknown to him who must pay it when due, on the day, at the very moment when it is presented to him—can it be subjected to the same rules?

To render the application of the principles complete, it would not be sufficient to require the authenticity of the acquittance or the last order; it would be still necessary to require that of all the endorsers, regularly ascending from the last up to the first.

This regulation, if established as a positive law, would render



the payment of bills of exchange almost impossible, and would entirely destroy their circulation.

However, as it cannot be denied that a regulation which should declare, without restriction, that the payment of a bill of exchange at maturity, would be a valid discharge of the acceptor, would also present some inconveniences, that it would seem to exempt the payer from all precaution, from all prudence; that it would in a manner assimilate a bill of exchange to a bill payable to bearer; that it would appear to raise against the real proprietor a perpetual plea in bar, insurmountable even in case of collusion between the payer and the holder, or in case of extreme negligence, bordering on collusion and fraud; the law declares only that the payer is to be *presumed* validly discharged. He will have in his favour the legal presumption. The plaintiff will be bound to prove the facts by which he would undertake to accuse and render him responsible for the payment. The tribunals will do justice.

In what concerns the re-exchange and return charges, the project of the law now offered does not differ from the ordinance of 1673.

The whole principle of the ordinance on that subject, was expressed in article 5. of Title VI. declaring that,

“ A bill of exchange being protested, the drawer shall pay the re-exchange only of the place where the remittance shall have been made, and not of the other places where it shall have been negotiated, saving the right of remedy by the holder against the endorser, for the payment of the re-exchange of the places where it shall have been negotiated by their order.”

This principle receives no alteration, and is only found more developed in articles 179, 180, 181, 182, and 183. of the present law.

It might indeed, with strictness, have been considered that the drawer, in putting into commercial circulation a bill payable to order, is presumed really to have given the indefinite right to negotiate it in all places, that the re-exchanges are occasioned only by his failure in the obligation to have funds to meet it at

maturity, and, consequently, the charge of all the re-exchange accumulated, ought to be made to fall upon him.

But if, on due consideration, this had been but justice, the justice seemed to be too severe; and as each endorser has really profited, for his own interest, of the facility of negotiating the bill in any place which suited him, it has appeared to us that there would be more order, moderation, and even equity in the provision adopted, conformable in other respects to the general commercial usage of Europe, as well as to our ancient ordinance.

By the side of, and parallel as it were, with bills of exchange, moves and ~~circulates~~ another species of commercial paper, the use of which has been singularly extended since the epoch of 1673; it is that of promissory notes.

The principal characteristic difference is, that bills of exchange can be drawn only from one place upon another place; instead of which, promissory notes are most frequently payable in the very place where they have been signed; so that there is no remittance of money from place to place, as in the case of bills of exchange;—a characteristic difference, however, which is effaced under certain circumstances, that is to say, when a promissory note is made payable in a foreign domicil, instead of the residence of the maker.

In other respects, a promissory note circulates in common, the same as a bill of exchange, by means of endorsement; this endorsement equally transfers the property of it without any formality or notice of assignment. The parties who have put their names to the note, are mutually answerable the one for the other, the same as the parties to a bill of exchange; the holder is bound to perform the same duties and obligations, and under the same penalties. He will also have the same right, in default of payment, to take money at the place of payment at the rate of re-exchange, and to redraw, from endorser to endorser, upon the places where the bill has been negotiated.

All this is thus decided and regulated in article 187. Section II.

These provisions have appeared to be the necessary consequence of the nature and functions of these instruments of writing, become of such great use in commercial operations, and which, concurrently with bills of exchange, fill all the channels of commerce, as they satisfy all its wants, all its conveniences.

Finally, gentlemen, the ordinance, by its article 21. under the title of *bills of exchange*, had fixed at five years the limitation of actions on account of bills of exchange, and was silent as to promissory notes. This left the limitation in regard to them to depend upon the terms of the common law, that is, at thirty years.

It has been considered that the rapidity of the progress of commercial affairs, a consideration which, without doubt, induced the legislature of 1673 to restrain to five years the limitation of actions in regard to bills of exchange, justified the convenience and the utility of the same provision with respect to promissory notes.

It is a just consequence of the similitude of functions and services of these two species of commercial paper.

Such, gentlemen, are the motives which have occasioned the project of the law which we now present to you; we hope that they will appear to you of sufficient weight to conciliate your suffrages and approbation.

# EXPOSITION OF THE MOTIVES

OF

BOOK II. TITLES I. TO VIII. INCLUSIVE,

OF

## THE COMMERCIAL CODE.

*Presented by Messrs. Bégouen, Maret, and Corvetto, Counsellors  
of State.*

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SITTING OF THE EIGHTH SEPTEMBER, 1807.

GENTLEMEN,

HIS majesty the emperor and king has ordered that the second book of the commercial code be presented to you.

This book comprehends all maritime transactions; and under this head, it succeeds to the ordinance of 1681.

To announce to you, gentlemen, that we have detached from that fine ordinance every thing which belongs to administration, to police, or to public law, and which has not been deemed proper to constitute a part of the code of maritime commerce; that we have, for the rest, preserved all the principles which it has, in some measure, consecrated, in what relates to maritime contracts; that we have permitted ourselves to make but few changes, and these such as appeared to us to be warranted even by those who have had experience in commerce and navigation, during the last century, or by the most evident justice—it seems to us, would be to tell you, that the love of order, the respect due to the wisdom of our ancestors, and a just circumspection have directed our labours; and that, if it is with confidence that we come to submit this project of law to your examination, that confidence is inspired by our admiration even of the ordinance on which we build.

Heirs, if we may thus express ourselves, of such a depository of wisdom and knowledge, we have thought that to arrange its provisions with method, in a plain and regular plan ; to free them from every species of doubt and obscurity ; to place them still more, if possible, within the reach of every man of probity and correct mind, would be to render a signal service to navigation and commerce, to give to legislation, which regulates their interests, a new guaranty by its very simplicity, and thus accomplish the views, alike extended and profound, of the emperor.

How many ages had elapsed before such rich materials were amassed, before we had arrived at such happy results ! and what an imposing spectacle is presented by the progressive course of maritime legislation !

Courage, want, poverty, and even the thirst of pillage, gave birth to navigation among the ancients ; but this source has been purified : useful communications and a regular commerce, founded upon reciprocal good faith, have succeeded to plunder.

The Phœnicians appeared among the first on this great stage, distinguished themselves above all other nations by the boldness of their cruises at sea, by the extent of their enterprises, by the greatness and power of the colonies which they founded.

The vessels of Tyre covered the Mediterranean, in times when the ocean not yet existed for commerce ; her maritime laws have passed to Rhodes, and to Carthage.

Under the name of Rhodian laws, they were adopted by the Romans, who admired their wisdom.

They governed, at that period, the commercial world ; but the destruction of the Roman empire, by the invasion of the Goths, caused them, as it were, to disappear ; they fell into the most profound oblivion.

It was only towards the twelfth century that the dawn of maritime legislation broke upon Europe.

Then appeared the *Consolato del Mare*, which the commercial nations eagerly adopted.

At a later period, Wisbuy, Brussels, Lubeck, Amsterdam, Antwerp, were proud of their maritime regulations. Guienne lays

claim to the *Judgments of Oleron*; and Rouen cites with pride the *Guidon of the Sea*.

It is from these rich and fruitful sources, that the framers of the ordinance of 1681 drew the principles of equity and wisdom which characterize their works; and it is undoubtedly a great misfortune that the reports and discussions in relation to that noble law have not been preserved: we should have drawn from them much valuable and luminous information.

They would have added to the succours which we have found, as well in the observations of the able jurists who have commented on the ordinance, as in the precious labours of the first commissioners charged by the government, a few years ago, to prepare the commercial code, and who have acquitted themselves with so much honour and credit.

Be that as it may, it is a sufficient recommendation of a great part of the project which is now presented to you, to inform you that we have almost constantly followed the ordinance of 1681.

The eight first titles of this project which we now bring you, will afford you evidence of this truth.

The new articles which regulate the rights and the duties of owners of ships, the privileges of creditors, the obligations and the functions of the captain, the condition of the crew, are, with few exceptions, in harmony with the ancient provisions.

Nevertheless, some additions, and even some changes, have appeared to us necessary.

For example, we have thought that it would be useful to establish more completely the order of privileged debts, and it has been deemed indispensable to take precautions which the legislature of 1681 had neglected, in order to verify the existence and the legality of privileged debts; which was the more essential as these debts may sometimes absorb the common pledge of the ordinary creditors: such is the object of the nine paragraphs of article 192.

The ordinance had determined that the owners of a ship, a share in which should be attached for a debt, due from one of them, at the moment of her being ready to sail, could not send her to sea without giving security for the estimated amount of the share so

attached. They were indeed authorized to have insurance effected on this portion, and to borrow on bottomry to pay the cost of the insurance; but the reimbursement of the sum borrowed was recoverable only out of the profits of the returns.

It has appeared evident, that the burden of a security for the portion of the ship attached, imposed upon the co-proprietors, was as oppressive as it was unjust.

The creditor who had made the attachment could not claim a greater right than his debtor; the latter could have against his co-proprietors only an unliquidated claim; he never could have demanded security for his proportion; he never could have withdrawn, as long as the association continued, this proportion from the chances of navigation, except by the means of an insurance which would have been entirely separate from his associates.

How, then, could the creditor, who takes the place of the part owner, be admitted to cast upon the co-proprietors these same chances, under the simple authority of insuring his claim for their account?

For it is clear, that according to the text and the meaning of the ordinance, this insurance was to be made on account of all the owners, since they were obliged to give security to the amount of the share attached.

It was also evident that the reimbursement of the cost of the insurance, assigned out of the *profit of the returns*, in favour of the co-proprietors, might very often be illusory, inasmuch as it often happens that there are neither returns nor profit.

Justice appeared then to require that the co-proprietors should have a right to send the ship to sea, a share in which might be under attachment at the moment of her being ready to sail, at the charge of rendering an account of this same share to the attaching creditor, and of giving security to that effect.

But in discussing this subject, we have arrived at results of greater importance.

We have deemed it necessary to examine whether it be for the general interest of navigation and for the public good, to permit the seizure of a ship at the moment of sailing; whether the interest of a single person, who till then had neglected to advance his pre-

tensions or his rights, ought to clog the speculations of the ~~ship-~~pers, compromit their fortune, frustrate the hopes of his co-proprietors, cause perhaps the most judicious enterprise to fail—and we have arrived at a solution to the contrary. We have thought that a ship, ready to sail, ought not to be liable to seizure: the legislation of some commercial nations came also in aid of this opinion, and of the provision we have established in consequence of it by article 215.

The activity of navigation, the interests of third persons, the encouragement of commerce, have appeared to us to justify the temporary and slight sacrifice of the rights, sometimes equivocal, of a negligent creditor.

A single exception has been deemed just, and it has been pronounced. This exception relates to the debts contracted for the voyage. It may be supposed that, without these debts, the vessel would not have been got ready to sail. They ought, then, to be paid. And even in this case, security may still, according to the provision in the law, reconcile every interest.

The duties of the captain, and his functions, have also attracted all the attention and vigilance of the law: How important are these functions, how sacred these duties!

The captain is the mandatary of the owners of the ship; he is answerable, saving events from superior force, to the shippers for their goods; he is answerable to the state for his crew; at sea, on the voyage, he is almost exclusively charged with all these interests; his functions become respectable in all these relations, and his responsibility is on that account the greater. It is under this character, gentlemen, that it has been determined, that he ought to answer for even slight faults in the exercise of his office. And such in effect is the provision of article 221. which besides records, under a favourable modification, with the general theory which regulates the obligations of every hired mandatary.

In treating of the seamen, you will surely remark, gentlemen, with interest, that by article 63. their condition is meliorated, in the case of being hired by the month, for a determined voyage, the voyage already commenced being broken up by the act of the owners or master.



Article 3. of the title of the ordinance *engagement*, contained, in this respect, inconsistent provisions, and such that the sailor hired by the month might be under the necessity of receiving less wages, if the rupture happened after the commencement of the voyage, than in the case where it should take place before the voyage was begun.

The fourth paragraph of article 252. of the project now presented, obviates this contradiction, and redresses the wrong which was done to the seamen. They are allowed half their wages for the remainder of the presumed duration of the voyage, and their expenses in returning home. This provision appears to reconcile what justice and humanity dictated in their favour, with the just regard due to the interests of the owners of ships, who in such cases cannot be separated from the interests of navigation.

The addition annexed to article 298. of the project, demands some examination.

This article presupposes that the master may have been obliged to sell a part of the cargo to defray the urgent expenses of the ship, and prescribes that *if the ship be lost, the master shall account for the goods thus sold, at the price he received for them, retaining the freight mentioned in the bills of lading.*

The ordinance made no regulation on this subject in case of the loss of the ship. The commentators maintained a contradictory doctrine : some of them considered the goods sold previously to the loss, in order to provide for the urgent wants of the ship, as the forced subject of a contract of bottomry, and refused payment to the owner of the goods ; others granted this payment, considering the goods as saved, since they had been disposed of before the ship had experienced any disaster. It was necessary to come to a determination on this point. It has been deemed equitable to consider that the goods sold to defray the urgent expenses of the ship, constituted a valid debt in favour of their owner ; that from that moment they had ceased to be at risk ; that the master, and the owners of the ship, who were bound to provide for her wants, had contracted a personal debt in applying

these goods towards the performance of their personal duty ; that in such a circumstance, a contract of bottomry cannot, by its peculiar nature, be either presumed or supposed ; that it would be strange to consider as lost, goods sold before the loss of the ship, whilst they might have been saved even in the event of shipwreck ; that finally, the owner of the goods sold, if they were not paid for by the master, would find himself stript of his property, without having any remedy against his insurers, who would not be chargeable with the reimbursement, since there would have been no object on board at risk at the time of the loss of the vessel.

These reflections have produced the provision expressed in the second paragraph of article 298.

In substituting, by article 306, 307. and 308. a deposit in the hands of third persons, and the lien of the master for his freight on the goods so deposited, for the right of stopping and seizing these goods, which the ordinance gave him, we have adopted a measure which appears to be better adapted to the conciliatory proceedings of commerce.

This measure preserves the interest of the master, who has a right to be paid his freight, before delivering irrevocably his pledge ; at the same time that it also provides for the security of the consignee, who, before paying the freight, has a right, in his turn, to examine into the state of the merchandise which was to be delivered to him.

Such, gentlemen, are the principal changes made in the ordinance of 1681, in the first eight titles of the law which we now present to you.

Some slighter modifications, transpositions, differences in the mere penning, justify themselves ; and their utility, though quite of a secondary nature, will not escape your penetration.

In adopting this project, gentlemen, you will second the paternal views, and the beneficent intentions of the hero who delights to entwine the olive branch of peace with the laurels which he has gathered, who regenerates the whole of commercial legislation, and desires the freedom of the seas only for the prosperity of his people, and of commerce.

# EXPOSITION OF THE MOTIVES

OF

BOOK II. TITLES IX. AND X.

OF

## THE COMMERCIAL CODE.

*Presented by Messrs. Corvetto, Bégouen, and Marcé, Counsellors  
of State.*

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SITTING OF THE EIGHTH SEPTEMBER, 1907.

GENTLEMEN,

CONTRACTS of bottomry and of insurance form the subject of the titles 9. and 10. of the book which is now presented to you.

These contracts resemble each other in many respects.

*In one, says an intelligent writer, the lender is exposed to maritime risks ; in the other, the insurer.*

*In one, the nautical interest is the price of the peril ; and in the other, the premium is the price of the maritime risks.*

*The rate of this interest, or of this premium, is more or less high, according to the duration and the nature of the risks.*

This analogy prevails in their essence. They are governed in their effect, by the same principles : neither of them can be the means of acquiring a title in the subject : their basis is a real risk : their object is only to relieve the borrower from the restitution of the sum borrowed, and to indemnify the insured against an intrinsic and real loss, in case of an unfortunate accident : hence they contribute, though in a very different proportion, to the prosperity of maritime commerce.

In pursuing these principles, gentlemen, you will appreciate the project which concerns these contracts. Here again the ordinance of 1681 has thrown light upon our labours, and we shall confine ourselves to pointing out to you with care the cases.

extremely rare, in which it has appeared to us necessary to supply or to change its provisions.

I am going to take a rapid view of a matter the principles of which so many able jurists, so many intelligent merchants, have developed; happy, if, whilst endeavouring to be brief, I do not become obscure!

Article 311. regulates the formalities necessary to be observed in contracts of bottomry, as well in France as in foreign countries: it was of importance here to make an addition to the ordinance.

A contract of bottomry carrying a privilege with it, the existence and the time of making this contract, ought to be verified in a manner not to expose ordinary creditors to becoming the victims of a collusory contrivance; the registry in the clerk's office of the tribunal of commerce in France, and the intervention of a magistrate in foreign countries, have appeared to us necessary to accomplish an object so just and so salutary.

Article 312. which renders the registry of every loan on bottomry necessary to its validity, is also a supplement to the ordinance.

Usage had anticipated this provision of the law: the interests of commerce required that this usage should be adopted: it was the wish of the most enlightened writers.

But it is necessary, to that end, that the bottomry bond be payable *to order*, without which, the acquirer would be but a simple assignee; he would be liable to all the exceptions or set-offs which might be brought against the obligee or lender.

Here a pretty important question has arisen. The endorsement raises an action of guaranty against the endorser. Shall, then, the endorser, who becomes surety on the bottomry bond, be answerable for the maritime interest? His obligation is indefinite: the maritime interest forms only an accessory part of the sum lent; the security ought to comprise both.

We have not entertained this opinion.

It is not that it may be disputed that the endorsement constitutes a guaranty, and that it gives a right of action on the lia-

bility of the endorser ; but we must determine to what extent this guaranty ought to go: its limit ought to be the sum lent. The lender on bottomry has endorsed his bond ; that is to say, he has transferred it for a sum equal to that which he himself has given, and which is found expressed in the text of the bond. It is just, it is in the order and the nature of things, that he should guaranty to the amount of that sum ; but why should he become surety for a larger sum ? What indemnity would he receive for this new guaranty ? Surety for the sum which he receives, he would also be liable without a motive for 25 or 30 per cent. maritime interest, which he does not receive: equity and justice seem to repel this idea.

But although we have adopted this opinion, we have thought it would be proper to leave the parties at liberty to make a contrary agreement ; for it may well be believed that the endorser, in running a greater risk, would not fail to stipulate for an indemnity proportioned to the conventional extent of his guaranty.

The third article of the ordinance prohibited the *taking up of money on bottomry, upon the body and keel of the ship, or upon the merchandise laden on board, to an amount beyond their value, under the penalty of being compelled, in case of fraud, to repay the whole sum borrowed, notwithstanding the loss or capture of the vessel.*

The framing of this article appears to be incomplete, because there was no reason for not applying the provision relative to the loss or capture of the vessel, to the case of the loss or capture of the cargo. It appears to be equivocal, because it was only known from the opinion of the commentators, whether *the whole sum* comprised or did not comprise the maritime interest. It did not sufficiently protect the interests of the lender, because, in case of fraud, the contract should have been pronounced void.

These considerations have induced us to frame the law in a manner which we have thought more exact. Article 316. of the bill declares the contract null, *whatever may be the subject on which it is effected*; if the sum lent exceed the value of the subject, and fraud be proved on the part of the borrower ; but this nullity is to be declared only on the *demand* of the lender.

The generic description of the subjects on which the loan is effected, comprehends, according to the difference of the cases; the totality, or the part of the ship, or of the cargo. The contract being declared void, could not have produced any effect, consequently, no maritime interest. The option granted to the lender, is only a natural consequence of the principles which ought to be applied to this species of contract, and a new guaranty of his real interests. In effect, it is a question concerning fraud, and he who has practised it should not have a right to allege it; it should be the lender, at the charge of proving it. And if the lender prefer not to bring such a suit, the proceedings in which might be difficult, and the result uncertain, how can his right be disputed? It would be, on the contrary supposition, to condemn him, without exception, to the hazard of a lawsuit, which might turn to his prejudice; he would sometimes be compromised or ruined by the apparent favour of the law.

It is very true that the lender, not demanding the abrogation of a contract fraudulently made, might, in the case of the arrival of the vessel or the cargo, insist upon the sum lent and the maritime interest, although he had not run a proportionate risk; but this favour is due to him on the one hand, conformably to what we have just said; and this punishment is due, on the other, to the borrower who is guilty of the fraud. The latter is even a gainer by this kind of transaction: he redeems himself from the shame of a prosecution, and the risk of a criminal condemnation.

The explication which I have just given of article 316. imposes on me the duty of justifying the provisions contained in article 318. which declares the contract void, without any regard to the demand of the lender, whenever the loan is effected on any of the subjects prohibited by the law.

The difference between the two cases is evident: the borrower is the only one culpable in the case mentioned in article 316. Here the lender is his accomplice; for they both knew the prohibitory provisions of the law.

The lender, in truth, is the only one punished in this case; for he receives no interest for the money lent, and the borrower

in the meanwhile has enjoyed it: but in fact the surest way to prevent prohibited loans is expressly to punish the lenders. It will not be so easy to borrow as long as there will be nothing but loss in lending.

Article 310. renders general the prohibition which the ordinance had made partial, to lend at *respondentia* on the wages of seamen.

Permit me here to enter into some details.

*One perceives*, said the commentators on the ordinance, *what a dangerous tendency it would have, to permit sailors to borrow money on their wages, since the expectation of receiving their wages attaches them as much as the fear of death to the preservation of the ship.* And indeed, would there not perhaps be some inconsistency in weakening this motive, in diminishing almost one half, conformably to the ordinance, of the interest of the sailor in the preservation of the ship?

But we must consult experience; we must go back to first principles.

Contracts of *bottomry* and *respondentia* are undoubtedly necessary, but they are in general onerous. The maritime interest stipulated in them is not only above all ordinary interest, but all premiums of insurance; and though this interest may be just, it is not the less ruinous to the borrower, whenever the latter has not in view a speculation sufficiently lucrative and extensive to afford him the prospect of an extraordinary profit. Now it must be confessed that a simple sailor seldom finds himself in this situation: and when even such a case should in fact be presented, what sum could the sailor raise from a *respondentia* loan, the basis of which would be only the half of his slender wages? He would experience all the inconveniences of a burdensome debt, without being able ever to reap the profit of it.

But moreover, the fourth article of the ordinance forbids *bottomry* loans *on the freight to be earned*; and in consulting the general spirit of this great work, we perceive that its framers have required in every case a risk really existing as the basis of a contract of *bottomry* or of insurance. Hence the rescind-

ing of these contracts, and even their nullity in case of fraud, whenever the risk is estimated above its just value; hence the prohibition to lend on anticipated profits; hence the obligation imposed on the borrower and the insured to prove the existence of a risk proportionate to the amount borrowed or insured. It follows that every loan, or every insurance, which should not be founded on a real risk, would be at bottom only a wager. The insurer and the lender would bet that the vessel would arrive safe: the insured and the borrower would bet the contrary. By this system every thing would be overthrown. Instead of interesting every body in the fortunate voyage of a ship, contradictory interests would be established. The insured would have every thing to gain by the loss of the ship; and by paying a small premium he would demand the amount of the insurance: the borrower on bottomry, in case of loss, would not even have a premium to pay. It is easy to perceive the inconveniences of such a system; and if some examples in its favour may be cited, we do not hesitate to answer, that assuredly it shall not be in France, and in a matter of such importance, that legislation will naturalize the rage of gaming, and the immorality of wagers.

We have only to apply these principles to the subject under consideration. The wages of the sailor depend upon the arrival of the vessel, the duration of the service; consequently, they are only in anticipation, they do not exist, they have not existed, they do not constitute a real risk at the time of making the contract; and it is impossible to foresee how far they will eventually exist.

In this case there is no difference between the *freight to be earned* by the ship, and the wages to be earned by the sailors; and if the ordinance itself declared that the *freight to be earned* could not afford the subject of a loan on bottomry, how resist the evident deduction from an acknowledged principle; when it is to be applied, with much stronger reason, to the wages of the mariners, whose interest cannot be too closely connected with the preservation of the ship.

An important observation also occurs on article 331. of the project, and the last of the title which relates to contracts of bottomry.



If there be a contract of bottomry and of insurance on the same ship, or on the same cargo, article 331. establishes a joint interest between the lender on bottomry and the insurer on the produce of the goods saved from shipwreck: it even allows some advantage to the latter, whereas the ordinance, on the contrary, granted a privilege to the lender on bottomry.

It is to be observed, that the contract of bottomry was, at the period of framing the ordinance, much more in practice and more useful than it is in our days. The system of insurance having been much improved since then, the relations between these two contracts have entirely changed. It would now be impossible for an extensive commerce to subsist without insurance, and it would be equally impossible for it to subsist for a long time with contracts of bottomry. The reason of the preference given to this latter species of contract, has therefore ceased, and it has been necessary to return, by an almost opposite road, to this same system of equity which the ordinance had established under different circumstances.

We come, gentlemen, to the contract of insurance, and I approach the conclusion of the observations which I was charged to submit to you.

It is agreeable to repose the weary attention an instant on this distinguished contract, noble production of genius, and first guaranty of maritime commerce.

The chances of navigation obstructed this commerce. The system of insurance appeared; it consulted the seasons; it directed its attention to the ocean; it interrogated that terrible element; it judged of its inconstancy; it anticipated its storms; it penetrated the politics of nations; it surveyed the ports and the coasts of the two worlds; it subjected every thing to wise calculations, to probable results; and it said to the prudent merchant, to the bold navigator, assuredly there are disasters over which humanity can only sigh; but as to your fortune, go, traverse the seas, display your enterprise and your industry; I take upon myself your risks. Then, gentlemen, if I may be permitted to use the expression, the four quarters of the world approached each other.

Such is the contract of insurance. In tracing the provisions which relate to it, with how much pleasure we have entered into the fine system of the ordinance! It forms, in this respect, almost the common law of nations.

A few modifications have appeared to us necessary; I shall indicate only the most important.

We have required in article 332. the mention of the day on which the contract of insurance is signed: we have even directed that it should be stated whether the signing took place in the *forenoon* or *afternoon*. These provisions are new, but they are not the less necessary.

It is generally admitted to be extremely useful to date the contract. Insurance, which, covering all the risk, is found anterior to other insurance, which shall have been subsequently made on the same risk, annuls this latter. The period of the contract, the fixed point, the hour even of this period, would besides be necessary to be established, in order to regulate the cases where there might be a presumption of the news of the arrival or the loss of the ship, at the time of the insurance; and in general to regulate the rights of all the creditors who might have an interest in the vessel, or the subject insured.

It must be admitted that this reasoning leads us to require the indication of the precise hour on which the contract should be signed. But here, the strict severity of principles ought to yield to the liberal and easy forms of commerce. In practice, a greater precision than we have demanded, cannot, without much inconvenience, be required.

We have said, in article 334. that *every interest susceptible of a valuation in money*, and exposed to the risks of navigation, may form a subject of insurance.

This regulation has appeared to us to correspond more exactly with the spirit of the ninth and tenth articles of the ordinance, which permitted insurance on the personal liberty of men, but forbade it on their lives. Personal liberty may be estimated at the price of money; life cannot. However, there is an exception to this second principle; the lives of African slaves may be valued

in money, though they are men; for the application of the Roman jurisprudence, which has been made to them, has not gone so far as to refuse them this quality. The ordinance, in prohibiting in general any insurance on the lives of men, appears either to have presumed that negroes were not men, or to have authorized insurance on their lives. The language of the project now under consideration removes all ambiguity.

Article 348. may also, gentlemen, engage your attention. It is there declared, that *any concealment, any misrepresentation on the part of the insured, any variation between the contract of insurance and the bill of lading, which would lessen the opinion of the risk, or change the subject of it, annuls the insurance.*

*The insurance is void even in the case where the concealment, the misrepresentation, or the variation, would not have had any influence on the damage or the loss of the subject insured.*

Although this article is new, it is less an addition to the ordinance than a consequence of the principles which it had sanctioned. Experience has, however, proved that this article, particularly the provision in the second paragraph, may prevent specious objections, which have sometimes been raised in the tribunals of commerce.

The insurer has a right to be acquainted with the extent of the risk offered to him: to withhold from him any circumstance which might change the subject of this risk, or lessen his opinion of it, would be to make him bear hazards which he would not, perhaps, be willing to undertake, or which he would not undertake except on different conditions: it would be, in a word, to deceive him.

Hence, reciprocal consent, which alone can create a contract, would be found wanting. The consent of the insured would be directed towards one object, and that of the insurer towards another, the two intentions tending in a divergent sense, would never meet: and yet, it is only the union of these intentions which can constitute a contract.

The second part of the provision necessarily flows from these principles.

The contract not having existed, no consequence, no effect, can

result from it. Hence it is a matter of indifference in regard to the insurer, whether the ship be lost or not; or that she be lost by a peril, on which the concealment or misrepresentation would have had no influence: the insurer will still be authorized to answer, that he has insured *such a risk*, and that this risk has not existed.

Here, gentlemen, finish the changes, or the important additions, which we have made to the ordinance: for the rest, it affords a sanction to our project, wherever it is found to agree with that law: the succeeding provisions of the project would therefore present only the subject of a barren discussion, uselessly prolonged.

We hope, gentlemen, that you will judge this important part of the commercial code worthy of your suffrages.

# EXPOSITION OF THE MOTIVES

OF

BOOK II. TITLES XI. XII. XIII. AND XIV.

OF

## THE COMMERCIAL CODE.

*Presented to the Legislative Body, by Messrs. Maret, Bégouen, and Corvetto, Counsellors of State.*

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SITTING OF EIGHTH SEPTEMBER, 1807.

GENTLEMEN,

WE present for your sanction the last titles of the second book of the commercial code, concerning *maritime transactions*.

These titles treat of averages, of jettison, and of contribution, of limitations of actions, and of exceptions to actions.

You will there recognise the spirit, and oftener the terms of the ordinance of 1681. It has become the maritime legislation of Europe; it has, consequently, in the law which we now present to you, undergone only some slight changes and additions, which experience has demanded. It is, therefore, in some degree, rather a new arrangement of the ordinance of 1681, than a new law.

We begin by defining average in general; we afterwards distinguish and class the different sorts of average; we apply to each species the appropriate provision; finally, we lay down the exceptions, and establish the exceptions or bars, to a right of action.

This order, indicated by the analysis of the ideas, has appeared to us to replace advantageously that of the ordinance, where the first and second articles are definitions, the third article declares, the fourth, fifth, and sixth, contain definitions, which render the order of the seventh title confused and embarrassing.

Thus, as we have already observed, some changes, and some additions, have appeared to us necessary to be made in the ordinance.

That provision of the sixth article, *the expenses of unloading in order to enter a harbour or a river, are the subject of gross or general average*, has appeared to us to require an addition. We have examined whether there was *gross or general average* in every case, as well in that of the fear of shipwreck or of capture, as in that where the ship, arrived in the roadstead of the port of her destination, cannot enter the harbour, port, or river, without discharging her cargo, according to custom, in lighters. We are also persuaded that the ordinance left an uncertainty which it was necessary to remove; and the law now presented to you declares, that *these expenses* are the subject of general average only, when the ship is forced to enter by stress of weather, or the pursuit of an enemy. The reason of which is, that, in this case, it concerns the common safety of the ship and the cargo; whilst, in the other, the expenses regard only those to whom the goods which are laden on board the lighters belong.

The eighth article of the ordinance declares, that the *load-manage, towage, pilotage for entering harbours, or rivers, or for going out, are the subject of petty average*. The law has said, that *load-manage, towage, pilotage, &c.* are not the subject of average, but *simple expenses at the charge of the ship*. (Art. 406.)

The reasons are, that it is evident, from the nature of things, that these charges are only the expenses of navigation, which might have been foreseen and calculated beforehand, and which, consequently, cannot be the subject of average; that if there be any question of extraordinary expenses, they are anticipated by No. 7. of article 400.; if of ordinary expenses, it is more simple to make them enter into the consideration of the freight; for there is their place; moreover, in making this regulation, the law only confirms what has been established by usage; and in effect, no account is ever made of similar charges; but in the bill of lading a fixed sum is agreed upon with the captain.

We pass on to article 407. of the law, which declares by whom the damage is to be paid in case of running foul. The ordinance had provided only for two cases, (articles 10. and 11.) the one, when the running foul was occasioned by the fault of one of

the captains; the other, when there is a doubt as to the cause of it. There is a third, when the running foul is the effect of hazard, which cannot be imputed either to intention, want of skill, or negligence of any person; then it is an accident by which some person may suffer, but for which no one ought to be answerable. The law, in consequence, adds to the provisions of the ordinance, that, in case of the running foul of ships, if the occurrence was purely accidental, the damage is borne, without remedy, by the ship which has suffered.

After having defined average in general, classed the different sorts of average, applied to each species the appropriate provision, and laid down the exceptions, we have arrived at this question: shall a demand for average be always admissible? We have considered that the demand ought not to be admitted, when, in order to enjoy its effect, it would be necessary to expend in charges as much or more than the damage which would be obtained, because then there was no interest for any body either to demand or to defend. However, we establish this principle only in the cases where the silence of the parties would not have made known their intentions.

Such are the motives which have determined some changes and additions to the title of averages in the ordinance. The law which we now offer, makes no essential alteration in the title of *jettison and of contribution*, and in that of exceptions to actions. With regard to that of limitations of actions, we have distinguished the act of abandonment from the action at law arising on a contract of bottomry or a policy of insurance.

The act of abandonment is limited to the term of six months, counting from the day the news of the loss is received, according to article 373. the motives of which one of the orators who has preceded us at this tribune has made known to you.

With respect to the action at law arising on a contract of bottomry and a policy of insurance, it is limited to five years, counting from the date of the contract. The interests of commerce demanded this change in the 48th article of the ordinance, the execution of which has been attended with a great many lawsuits, because it established a great variety of limitations.

But if limitations ought to be established against merchants who neglect to prosecute their rights, it was also conformable to justice to say that they cannot take place when there shall have been a note or obligation given, settlement of accounts, or judicial proceeding, and such is the regulation of article 434. of the present law.

Gentlemen, this book, the provisions of which we have just made known to you, completes the commercial code. Like the ordinances of Louis XIV. of which it is destined to supply the place, it is surrounded with the trophies of victory; it takes its station among the laws; it comes to regulate the commercial transactions of a people whose connexions of every kind are found extended by arms, by political negotiations, and still more by that influence which a great man exercises over the neighbouring nations of his empire; particularly when some of them have desired him for their legislator, and others have proclaimed him their protector.

In consequence of this increase of the commercial relations between the French, and the other people of Europe, the influence of this code will not be confined to the limits of France; it may indeed become a common law to the people whose interest places them in our system of federation and alliance. Our august emperor had thus anticipated it, when he demanded that the provisions of the commercial code should be as much as possible in harmony with the other systems of commercial legislation in Europe; when he required that every interest should be consulted; when, after having intrusted the first plan of the code to able men, he caused it to be discussed in the courts of cassation and of appeal, in the tribunals, in the chambers, and in the councils of commerce. We must confess that this discussion has been honourable to those who bore a part in it; they were influenced by the sole desire of improving a work already possessing great merit in itself.

The result of this luminous discussion forms an immense mass: collected by the ministers of justice and of the interior, it was necessary to analyze all the observations which it contained; to



compare them, and to profit by this concentration of light to make in the first draught of the code all the changes which the prosperity of commerce and the national interest demanded. The commission instituted in the year 9 (1801) having accomplished its task, considered itself as dissolved; three of the members of that commission, Messrs. Gorneau, Legras and Vital-Roux, enlightened civilians and merchants, full of zeal, but above all, strong in their attachment to the emperor, solicited of the ministers of his majesty the permission to undertake, at their own expense, the revision of the code; the ministers gave them authority to that effect; they did more, they soon after encouraged them in it; these gentlemen devote themselves with ardour to this new labour; they increase their knowledge by that of Messrs. Vignon and Boursier, by the information they find in French authors, in the legislation of the other nations of Europe; they establish themselves impartial judges of a work in which they had taken so great a part; they thus put it in the power of his majesty to order, in the year 11, (1803,) the impression of the commercial code revised, which has served as a basis to the meditations of the minister of the interior, and to the discussions of the council of state.

If the sentiment of gratitude has led us to name those who have more particularly aided us, in fulfilling the desire of his majesty and of commerce, let us be permitted to express the same sentiment to those among you, gentlemen, who have enlightened by their intelligence the courts, the tribunals, and the chambers of commerce of which they are members.

It is this union of knowledge which has produced the commercial code; it is not the work of any particular person: it is a sort of national monument raised by the contributions of every intelligent man of the empire.

# EXPOSITION OF THE MOTIVES

OF

## BOOK III.

OF

### THE COMMERCIAL CODE.

*Presented to the Legislative Body, by M. Segur, Counsellor of State.*

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SITTING OF THE THIRD SEPTEMBER, 1807.

GENTLEMEN,

THE emperor has re-established and carried to the highest degree of glory, the reputation of our arms; he has revived justice in our laws, order in our administration; he desires still more, he wishes to restore public morality, because he knows that without it, nations which make the greatest show of splendour, have no real grandeur, no solid power, no durable prosperity: we have glory enough, we ought to have morals.

It is with this view that he charges us to present to you a severe law: its title suffices to make you acquainted with its importance; it is a law respecting failures and bankruptcies.

Unhappily, this restrictive law has become a public want; general indignation calls for it, universal desire expects it, every honest merchant in France demands it; and perhaps, for the first time, one would be tempted to believe that the indefatigable vigilance of our sovereign, who, hitherto, has anticipated every wish of the French people, has in this instance only gratified it.

But you know as well as we, gentlemen, that he who will never be forgotten, and who has never forgotten any thing, has unceasingly been occupied, for several years past, with this important part of legislation.

A plan of the commercial code, drawn up in the year 9, (1801,) by able men, already contained some salutary remedies against the evils complained of, and seemed to offer a sufficient curb to arrest the public scandal of those audacious and repeated bankruptcies, which left so many culpable persons without shame, and so many victims without resource and without vengeance; yet the public sentiment required more severity.

But nobody knows better than his majesty, how much celerity is necessary to make great conquests, and deliberation to make good laws: the greater the evils are, the more the legislator should distrust the indignation which they inspire. An act of administration may be rigorous without danger; this act is only for a time: the law is for duration; it ought to be applicable not to one circumstance, but to all; not to a capital where luxury relaxes morality, but to the extent of the provinces of an immense empire, where good morals are still respected; this law ought to encourage probity, succour misfortune, correct imprudence, and punish crimes; it ought to be indulgent to the former, inexorable to the latter, just to all.

In order to be better informed of the truth, the emperor wished to surround us with lights; the plan of the code has been sent to all the chambers and tribunals of commerce, to all the courts and tribunals in France; their observations on this plan have been printed. The code has been modified by the first framers in consequence of these observations; and for several years past the council of state has had it under consideration, in order to obey the orders of his majesty, to compare together this plan of the code, and these observations, with the ancient ordinances, and the laws of the most commercial nations of Europe.

We offer you to-day the result of this labour, with the more confidence, because it is the fruit of long and enlightened discussions, by the experience of all that our country contains of upright merchants and able magistrates.

Charged particularly to present you the third book of this code, which treats of *failures and bankruptcies*, I come now, as briefly

as possible for me, to develop the system, and state the motives which have induced us to adopt it.

In order to remedy the disorders which for some years past have so scandalously tarnished the commercial honour of France, it was necessary, in the first place, to discover their real causes. Two principal ones have been found to exist. The first, the revolution, which by its violent commotion, overthrew men, fortunes, and ranks, offered alike to hope and to fear, the most irregular and boundless chances of elevation or ruin; put in the place of money, a paper currency of which the forced circulation and rapid fall left no fixed value to any thing, nor real credit to any person, and which opened an extensive field to the calculations of avidity and the speculations of dishonesty.

Failures, far from being a subject of shame, had become the means of fortune, the source of which scarcely any care was taken to disguise; and if those numerous bankruptcies were not always the work of fraud, they were at least the offspring of ignorance, because every body was anxious to engage in commerce, without possessing any of the knowledge which that profession requires.

The remedy for the evil which I have just described, is to be drawn from time; and already its happy effects are perceived. The return of public tranquillity, the wise firmness of the government, the disappearance of paper money, the re-establishment of credit, will gradually replace things in their ordinary course, and men in their natural order; shameful stockjobbing is discontinued; professions are classed, the bonds of attachment are more closely united, and national honour will soon completely dissipate every thing that can yet remain of that deplorable anarchy.

Thus, gentlemen, this first cause of the disorders of our commerce has had but a slight influence upon the labour in which we were engaged, since it ceases, as it were, of itself to operate.

The second cause, more durable, of the scourge of bankruptcies, proceeds from the imperfection of the laws.

We do not pretend, in this place, to diminish the just esteem due to the ordinances of Louis XIV. and the immortal labours of Col-

bert; the ordinance of 1673 was a wise law, and sufficient for the period in which it was made: people, in France, then began to turn their attention to commerce; it was, as it were, in its cradle: every thing just brought into existence requires simple regulations. A very small part of the population in France were engaged in commerce; the morals of the merchants were pure; the progress of business slow; the course of speculations confined. Since that period, commerce, by rapid advances, has changed the morals of men, and the destiny of states. Transporting the sceptre of dominion to the place where it established the power of credit, it has become one of the greatest objects of the study of legislators, and of the ambition of nations.

This extent, this importance, this activity of commerce, requires, at the present day, a legislation at once more vigilant, and which offers greater security: reflection suffices to make this perceived, and it has been demonstrated by melancholy experience.

Our ancient laws were confined to the prescribing of forms to the insolvent debtor, the non-compliance with which was not attended with any danger to him; imprisonment of the person was the only security to creditors.

Transactions took place without any superintendence of the public authority; which only showed itself to give sanction to contracts, in which dishonesty had taken advantage of innocence or necessity.

Bankruptcy, which was considered only as a misfortune, as long as fraud was not proved, left the bankrupt independent in the management of his property.

The carelessness of creditors, who were without guide and support, forced them into a state of dependence upon the debtor.

The assignees (syndics) chosen, in the first moments of failure, sometimes by fictitious creditors, often by the friends or relations of the insolvent, almost always by a small number of creditors present, who were bought over at the expense of the absent, and who disguised the malversations of the insolvent, and the real

situation of his affairs, they thus forced the hopeless creditors to accept of a disadvantageous compromise, the effect of which was to save the bankrupt from disgrace, deprive his victims of three fourths of their property, and leave the debtor in possession of the means of displaying an insulting luxury.

If no compromise took place, in consequence of the resistance of some justly irritated creditor, an assignment was made; but the liquidations were intrusted to men who found it their interest to protract them without end; no authority superintended them, and the creditors, weary of interminable delays, at length renounced a hope, which no reparation supported.

I shall not speak of the various and often contested rights of creditors, of those of wives, who, after having promoted the luxury and embarrassment of their husbands, placed under their own names, sheltered from all pursuits, the spoils which they had carried off from their victims: an orator more learned and eloquent than I am, has undertaken to expose to you the deficiencies in our laws on that subject, and the means which we have thought proper to take to remedy these abuses.

Public order was equally insecure as private property. The law knew only misfortune or dishonesty; it presumed misfortune; it was necessary to prove fraud: the creditor was charged with this proof at his own expense; it was natural that he should be more concerned about his property than his vengeance; in spite, then, of the severity of the law against fraudulent bankruptcies, nothing has been more rare than its application, and assuredly nothing was more encouraging than this impunity.

After having, gentlemen, exposed the faithful picture of the abuses which exist, a picture the truth of which we do not believe can be denied, I must explain to you the system of the new law which we propose, in order to put it in your power to judge whether, as we venture to flatter ourselves, it presents a sufficient remedy for those disorders, a protection sufficiently vigilant to creditors, a restraint sufficiently powerful against misconduct and fraud, and a security sufficiently solid for public order.

The legislator, in undertaking a law of so serious a nature, finds himself at first placed between two rocks, which he ought equally to avoid ; that of being too severe against misfortune, or too lenient towards dishonesty : therefore, the first question which has engaged our attention, and the solution of which serves as a basis to the whole system of the law, is the following :

Ought a merchant who fails in complying with his engagements, and stops payment, to be, from his failure, presumed fraudulent, or considered as unfortunate, until the truth be made known by an examination of his books, and credits ?

We have already made known to you all the abuses of the ancient law, which, considering the insolvent only as unfortunate, left him independent, assured to him almost impunity, and frequently obliged the creditors to sign, at his pleasure, his discharge, and their ruin.

On the other hand, it would have appeared very rigorous to consider every failure as a crime, and to drag before the criminal tribunals every merchant whom the misfortune of the times, or the force of circumstances, should have rendered incapable of fulfilling his engagements.

Very often a failure is like a shipwreck, of which fate can only be accused : commerce has its storms as well as the ocean ; the events of the world, the course of politics, war, peace, famine, abundance even, produces unforeseen changes, gives sudden commotions to commerce, and baffles its wisest calculations ; often, indeed, a merchant deceived in his confidence, and overwhelmed at once by the bankruptcy of others, is compelled himself to fail in his engagements, which he thought he was certainly able to meet.

These just and powerful considerations, gentlemen, ought strongly to fix the attention of the legislator, and induce him equally to avoid a severity too inflexible and an indulgence too dangerous.

It has therefore been deemed proper to consider every person failing in trade, not as guilty—not as a man innocent, but as a debtor whose conduct requires a rigorous examination, and a solid security.

In every failure there exists a misdemeanor, since there ~~has~~ been a violation of engagements and of property. He who ~~has~~ committed this misdemeanor may have been led into it by ~~mis~~fortune, by misconduct, or by dishonesty.

If by misfortune, he ought to be protected ; if by misconduct, he ought to undergo correction ; if by dishonesty, he ought to be given up to all the severity of criminal judicature.

The misfortune ought to be shown by the insolvent ; the misconduct proved by the creditors or the public, the fraud prosecuted by the public authority.

In every case the insolvent no longer ought to have the disposition of his estate ; it is the pledge and property of his creditors ; he ought not even to have the liberty of his person until an examination into his conduct affords a presumption of his innocence.

As long as his creditors are unknown, have not proved their debts, as long as the absent creditors have not had an opportunity of establishing their claims, the management of his estate, the examination of his papers, the conducting of his business, should be intrusted to disinterested hands, named by the tribunal of commerce, and under the superintendence of a judge of that tribunal. The creditors, as soon as they are known, ought to have a voice in the choice of men to be charged with their interests : they are made acquainted with all the proceedings, all the details in the administration of the affairs of the insolvent ; the commissioner calls them together and identifies them ; no composition can be concluded between them and the debtor, but by the voice of the majority, combined with a majority in amount equal to three fourths of the debts.

If no composition take place, the creditors, all assembled, all identified, informed by the accounts which an impartial administration shall have exhibited, shall appoint assignees (*syndics*) who, under the superintendence of the commissioner and the authority of the tribunal, shall make a prompt liquidation and an equal dividend.

During the progress of these operations, the commissioner, the agents, the assignees, are bound to make known to the magistrate



of safety all the circumstances of the failure; the latter may of his own accord obtain the necessary information, and whenever there appears to him any indications of misconduct, or fraud, he must call the insolvent before the correctional tribunal, or summon him before the criminal tribunal.

Such, gentlemen, is the general spirit of the system of the law, which his majesty orders us to present to you; we believe that its useful results will be,

First, to offer to creditors a solid guaranty, a protection active and vigilant; a certainty either of terminating their affairs by a just composition, or of obtaining a prompt liquidation.

Secondly, to repress scandalous luxury, and the imprudence of hazardous speculations, by the fear of the name of bankrupt, and the correctional penalties which await a bankruptcy from misconduct.

Thirdly, to ensure the punishment of dishonesty, and to alarm it by useful examples.

Fourthly, in fine, to offer to every honest and unfortunate merchant, the means of extricating himself from the uncertain and cruel situation in which the ancient legislation left him, and to preserve at least his honour in losing his fortune; for even the rigour of the law affords a certain security for probity, and every merchant, whom imperious circumstances shall have reduced to the necessity of not fulfilling his engagements, will no longer be confounded with the imprudent man who has gambled with the money of his creditors, or the rogue who has stolen it. The honest but unfortunate merchant, after having undergone all the rigours of the forms which I have just mentioned, and after having seen his books, his credits, his papers, his conduct, submitted to a superintendence so active, so impartial, so rigid; the liquidation of his affairs effected without the agents, the assignees, the commissioners, the creditors, the public being able to find the least cause to summon him before the tribunals, may confidently demand esteem and pity; he may even preserve the hope, by completing his payments, if any circumstances should afford him the means of doing it, of obtaining a restoration, the more honourable because we have endeavoured to render it more difficult.

I have just made known to you, gentlemen, the spirit of the system of the new law. I am now going to pursue the course of it, and to exhibit briefly, the motives of the principal provisions which it contains.

I shall not speak of the general provisions which are placed at the head of the law; the exposition which I have just given of the system which has dictated them, I trust, has sufficiently explained the distinction which we think necessary to establish between a failure, a bankruptcy, and a fraudulent bankruptcy.

The first chapter contains the provisions which the framers of the project of the code, and the chambers and tribunals of commerce had judged proper to add to the provisions of the ordinance of 1673, to fix with more precision the commencement of the failure, and to prevent the existence of any fraudulent act, which the merchant who foresees his failure might be tempted to commit within the ten days which precede it.

Article 445. of this chapter, will particularly engage your attention; it declares that the person failing, from the day of his failure, is diseised absolutely of all right to the administration of his estate: this provision alone, gentlemen, would already be sufficient to put a check to the scandal which must have struck you most forcibly in failures, and to offer to creditors a well founded hope of no longer seeing suddenly disappear, that property which misfortune or misconduct may have left them.

In the second chapter you will remark the care which the law takes to require promptness in affixing the seals on the insolvent's property, a salutary precaution, and without which, the fate of creditors might be easily compromised.

After having deprived the insolvent of the administration of his estate, and affixed seals upon his goods and papers, it was necessary, in the first place, to secure his person, until he should be recognised as innocent, imprudent, or guilty; secondly, to organize the administration of his estate, which can now no longer be considered as his property, and must serve as a pledge to creditors yet unknown. Formerly, the first comers, calling themselves

creditors, appointed the assignees, and I think I have shown how much this first imprudence was favourable to dishonesty, and fatal to its victims.

We have thought that this temporary administration ought to be confided to disinterested men, to agents appointed by the tribunal of commerce, and although it would seem difficult to adopt a wiser measure, and one which would afford greater security to public order as well as private interest, it has been deemed proper to place these agents under the superintendence of a commissioner chosen among the judges of the tribunal of commerce. The want of such a superintendence was so generally felt, that when the framers of the plan of the code proposed to establish for failures a commissioner of the government near the tribunals of commerce, the majority of the chambers of commerce approved of this establishment, the inconveniences of which were, however, evident. The influence of such a magistrate over the tribunals of merchants would injure the nature of their institution; and besides, we think it superfluous to demonstrate how much danger there would be in giving constantly to the same men, functions of so delicate a nature, in which they would incessantly be exposed to the snares of seduction, and the distrust of misfortune.

The duration of the administration of the agents is fixed at fifteen days, and cannot be prolonged beyond a month. This term has appeared to us sufficient to know a great number of legitimate creditors; and as soon as they are known, it is proper that they should be called to the examination and administration of their affairs.

The object of Chapter IV. is to regulate the functions of the agents, and the conduct which they ought to observe in regard to the insolvent; almost all these provisions tend to ensure the prompt examination of the books and the effects of the insolvent, to discover whether he may be set provisionally at liberty, and called to give the necessary explanations in regard to his situation: the agents may receive the sums due, and sell the goods of a perishable nature. Every necessary precaution has been taken for the security of the money collected, and to confine the

duties of this provisional administration to measures of urgent necessity.

The balance-book is the subject of Chapter V. The ancient laws and usages had provided for every thing in this respect; we have only added to them the right given to the commissioner-judge, of interrogating every individual who might give him useful information for the formation or adjustment of the balance-book.

Chapter VI. relates to the appointment of provisional assignees. When the creditors who are known, have assembled to a certain number, they propose a triple list of the number of provisional assignees whom they judge necessary to be nominated: from this list, the tribunal makes its appointment. It has been thought, that this was the only provision which could reconcile the right and interest of the creditors with the certainty of a good choice. After the appointment of the provisional assignees, the agents cease their functions, and these agents receive a compensation, only when they are not creditors; it is almost a certainty that the agents will be always chosen by the tribunal from among the creditors, except in very rare cases, in which the tribunal would have just reason to distrust the claims of the first creditors, who may have made themselves known at the moment of the failure.

We insist on this point; for the apparent complication which seems to result from the system which creates agents, provisional and definitive assignees, ought to disappear in the execution of the law; and it is more than probable, that the choice made by the tribunal, will inspire a just confidence in the creditors, and almost always the same men, in a failure, who shall have been agents, will be confirmed as provisional assignees, and will become, in case of need, definitive assignees.

The provisional assignees must proceed diligently to the removal of the seals, and to the inventory; these operations are the subject of Chapter VII. and there it has been deemed proper to place the important provision, which obliges the agents and the assignees to communicate to the magistrate of safety, all the information necessary to a knowledge of the circumstances of the in-

solvent, and this severe measure will be the terror of crime and the safeguard of innocence.

You will also remark, gentlemen, in this chapter, the provision which orders all the funds collected by the agents, and assignees, to be deposited in the bank of the sinking fund, (*caisse d'amortissement*.) You will doubtless think with us, that promptitude in the liquidations will assuredly take place when nobody will have any farther interest in prolonging their duration.

Proof of the debts is subject to forms sanctioned by the approbation of all the chambers of commerce; and the superintendence of the commissioner, which we have added, must afford, on this important subject, complete security: the examinations authorized, the production of the registers, ordered in certain cases, ought to satisfy every legitimate creditor, and dissipate all fear of error or fraud in this respect. The creditors being all acknowledged and verified, will meet, and receive the accounts of the provisional assignees; they may make a composition with their debtor, but this composition cannot take place without the concurrence of the majority of the creditors in number, and three fourths in amount of all the debts. By this means, gentlemen, we have intended to erect a barrier against those disastrous compositions, with which the collusion of a small number of large creditors surprised the majority, when only the amount of the debts was taken into consideration, or those compromises, equally disadvantageous, which a majority in number of small creditors, pressed by their necessities, might make against the wishes and interest of creditors to whom considerable sums were due. We think, by this regulation, that we have answered the demands of justice and public order. This composition cannot be valid until after it has been confirmed by judicial authority, and this confirmation shall never take place when the insolvent is found charged with misconduct or fraud.

If no composition take place, the creditors will form a contract of union, and appoint definitive assignees, charged, under the superintendence of the commissioner and the authority of the tribunal, to adjust the balance-book; if necessary, to manage the affairs of

the bankrupt, to collect, sell, and proceed to the liquidation of the whole estate, and make a dividend according to the different claims of the creditors.

Here we repose from the duty of showing the motives of a severe law : we may, after so many measures, dictated by a prudent circumspection, and a necessary rigour, speak to you of those which misfortune inspires in the bosom of humanity.

In this chapter, you will find provisions which regulate the assistance which the mass of creditors ought to give to the insolvent, with whom they have made no composition ; this assistance will be proportioned to his wants, to his condition, above all, to his conduct, and to the more or less of loss occasioned to his creditors. Your sentiments are too conformable to ours to fear that you will disapprove of a measure of beneficence, when regulated by justice.

M. Treilhard, my colleague, will unfold to you the motives of the provision contained in Chapters IX. X. and XI. relative to the different species of debts.

I proceed to Title II. of the project of the law ; it regulates the forms to be observed for the assignment of the bankrupt's estate ; but as all the provisions which it contains are drawn from the code of civil procedure, it requires no particular observation.

Title III. contains an important change, and, consequently, deserves to engage your attention.

*Revendication*\* was a long existing usage in France, and that favour granted to the seller to take back his merchandise when he could prove the identity of it, and found it, without alteration, packed up in the same state in which it was sold, was regulated by

\* *Revendication* is a French word, which literally means nearly the same thing as the English word repurchase, but corresponds, in the sense used in this code, with our legal expression *stoppage in transitu*. It was a right, anciently existing in France, of seizing and taking back goods which had not been paid for according to the terms of the sale ; and every creditor had this right in case of the failure or bankruptcy of the purchaser, provided the goods remained entire : they might indeed be pursued in the hands of third persons, if they had not been sold at auction by public authority. It is derived from the civil law. Vide Dig. 1. 4. 5. Dig. 18. 1. 19. 58. Dig. 19. 1. 11. T.

no law, and varied according to local custom: this usage was a source of a great many disputes, and the perpetual subject of the complaints of creditors in every failure; they submitted with reluctance to this privilege, and looked upon it as unjust. The framers of the project of the present code had suppressed and interdicted all *revendication*; most of the chambers and tribunals of commerce had approved of this change by their silence; others had shown the motives of their approbation; some had voted for the continuance of the right of *revendication*, alleging, as a principal reason, that an ancient usage established in France, and followed in some other countries, ought not to be changed without necessity.

After a thorough examination, the usage of *revendication* has been recognised to be a source of lawsuits, and a means of fraud, that wisdom would vainly try to regulate a usage which is founded neither in law nor equity, and that its greatest inconvenience was particularly to leave, by this privilege, the fate of creditors at the mercy of the bankrupt, who might, at his pleasure, favour one and sacrifice another, by preserving or altering the marks which could prove the identity of the goods which had been delivered to him, or in retarding or hastening the sale of them. On these considerations, it has been decided not to permit a *revendication*, except for merchandise in deposit for that which is *in transitu*, and which has not yet been mixt with other goods in the warehouse of the buyer; we admit it also for remittances of bills not yet due, or due and not yet paid, if these remittances have been made with a simple order to receive and keep the amount, subject to the disposition of the owner.

By this decision we hope to render an essential service to commerce, prevent numberless lawsuits, and fulfil the wishes of the majority of the chambers and tribunals of commerce, whose opinion has been consulted.

Title IV. treats of simple bankruptcy; it appears to be demonstrated that in sanctioning the provisions contained in it, you will afford a most efficacious remedy to the scandal which has excited general indignation; for it cannot be dissembled, that fraud is not the most common cause of this disorder; ignorance,

luxury, imprudence, are its real sources; and by the ancient law they enjoyed perfect impunity; whenever fraud was not proved, innocence was acknowledged; the crime might be punished, but the immorality escaped. The new law imposes correctional penalties on the merchant whose private expenses have been excessive, who, though well knowing his embarrassed situation, has compromised the fortune of his creditors by imprudent speculations; he shall be even chargeable as a fraudulent bankrupt if he has not kept his books with regularity, and observed the formalities enjoined by the law. The name of bankrupt, which this law renders dreadful to him, will, we doubt not, be a powerful check; and if it do not alarm those guilty men, born for crimes, and whom nothing arrests, it will preserve from a ruinous fall weak men who everywhere constitute the majority.

It is therefore, in full confidence, that we propose to you this measure, which, in fact, will be more of a preventive than a rigorous nature, and which, submitted to the conscience of impartial and respectable judges, appears to us to be one of the most efficacious means to re-establish order, and restore good morals.

Chapter II. of this title, which relates to fraudulent bankruptcies, only develops in greater detail the provisions which are found on this subject in the ordinance of 1673.

The inflexible rigour of the law should be applied to every case mentioned in these articles, and it is unnecessary to make any observations on points which had not occasioned any difference of opinion.

The object of Chapter III. is to prevent private interest from being sacrificed to public vengeance, and the correctional or criminal proceedings against the bankrupt from delaying the progress of the liquidations, and injuring the interest of the creditors.

Title V. lays down the forms which the insolvent ought to pursue in order to obtain his restoration; we have rendered this restoration difficult; it will be the more honourable. When a man would be restored to honour, he ought to desire that nobody could doubt of his innocence, and honesty can never be afraid of the light.



We have, gentlemen, just explained to you this new system of legislation, developed all the motives which have dictated its provisions; we have made you sensible of their importance; we hope that you will recognise their utility, and that in adopting them, you will fulfil the wise, just, and beneficent views of a monarch who wishes to eradicate every vice, as he has vanquished his enemies; who has begun his illustrious reign by his triumphs over anarchy, and who desires to crown his celebrity and our gratitude, by rendering to credit its power, to commerce its good faith, and by raising our happiness as high as his glory.

## SPEECH OF M. TREILHARD.

GENTLEMEN,

THE orator of the government, who has preceded me at this tribune, has exhibited to you the whole of the law in relation to failures; and the manner in which he has acquitted himself of his mission, no doubt makes you regret that he has left me any thing to say : your regrets will be the less, because there remain for me but few subjects on which to discourse.

You have seen that at the moment a failure takes place, the person and estate of the insolvent are secured; the person, that he may answer for misdemeanors; the estate that it may be distributed among his creditors.

Every thing is placed under the superintendence of a commissioner, whose character is a security for the choice of the agents and assignees, a strict proof of the debts, a speedy sale and at little expense; in short, every thing that can afford relief and consolation in a common misfortune.

I must now speak to you *of the rights of creditors, of the dividends, of the liquidation of the personal property, and, finally, of the mode of selling the real estate of the insolvent* : this is the subject of Chapters IX. X. and XI. of the first title.

I shall begin by what concerns the creditors in general; I shall conclude by the exposition of the rights of wives to the property of their husbands, in cases of failure.

This great principle, that economy both of time and of proceedings, has never been lost sight of, in the project now under consideration: it is particularly in commerce that a prompt return of funds is desirable; a tardy payment is never a complete payment.

The necessary measures have therefore been taken, in order that the first collections be employed without delay in the pay-

ment of privileged debts : privilege ensures a preference in the payments ; nobody has a right to retard them when once the privilege is recognised or adjudged : if there be any difficulty as to its existence, it belongs to the courts of justice to decide. Every creditor evidently has an interest, and, consequently, a right to discuss and dispute a pretension of privilege, which, if adopted, may often leave the simple contract creditors without any hope.

In the number of privileged creditors, must indispensably be classed he who has received a pledge ; but it was necessary to leave to the will of the mass of creditors the right of redeeming the pledge, by reimbursing the person who had advanced money on it ; he can have no other claim, and if the pledge exceed in value the amount due on it, the surplus belongs to the other creditors.

You will doubtless remark, gentlemen, that I am considering only a few particular rules in regard to commercial matters ; it forms no part of the project of the law to trace the constituent principles of privileged debts ; they are already fully established in the Code Napoleon.

This reflection is applicable to the other species of debts, to mortgages, for example ; the same code contains all the general rules on that subject, and the only question here is, concerning some particular difficulties which may arise.

You know that a mortgage creditor has the advantage of a preference in the value of the estate mortgaged to him ; this preference is by no means exclusive of his rights, in regard to all the other property of the debtor.

He who is personally bound, is required to fulfil his engagements from the whole amount of his property, real and personal ; it is all a common pledge to his creditors : this is the express provision of articles 2092. and 2093. of the Code Napoleon, which are indeed only the expression of what results necessarily from an obligation contracted : how can he who has bound himself in a contract, escape from its force as long as he has any property ?

The special lien of a debt upon real property gives, therefore,

to the creditor a right of preference in the value of this real property, without, however, prejudicing in any manner his general right in all the other property.

Hence it follows, that a mortgage creditor who cannot be paid wholly, or in part, out of the value of the property mortgaged, ought to come in with the other creditors to take his dividend for what remains due to him.

But here a difficulty arises: when the first mortgagee shall have received a part of his claim from previous payments out of the personal estate, if the value of the mortgaged property be more than sufficient to discharge the residue, ought the surplus to go to the second mortgagee? or ought the simple contract creditors first to have a deduction from it, of the amount previously paid to the first mortgage creditor?

The project which is now presented to you proposes some alteration on this point, in regard to what was the ancient practice, at least in a great part of France.

It has been considered that the payments made to the first mortgage creditor, were only a kind of advance made by the mass of contract creditors—an advance which ought to be reimbursed from the value of the real property mortgaged, when it proved to be more than sufficient to discharge the claim of the first mortgagee.

In the ancient system of mortgages, when they were concealed and founded upon an authentic obligation, or a judgment, a creditor might in good faith consider the mortgaged property of his debtor as a certain pledge for the payment of his debt; in truth, his hopes were often frustrated by the successive discovery of a crowd of creditors unknown to him: this was a radical defect in the system, which happily no longer exists.

In this state of things, it would have been hard, and perhaps unjust, to deprive this creditor of the value of the property which constituted his pledge, under the pretext that the creditor who preceded him had been paid in full, or in part, out of the personal estate of the debtor; he had no knowledge of this first

mortgage, and he had, consequently, just grounds to believe that his pledge was a security for his debt.

It is not the same at the present day ; mortgages are special and public ; a mortgage creditor has no lien except upon the property particularly pledged to him, and the mortgage of which must be registered in such a manner as to give publicity to his right, and inform all who may have claims upon it that the property is already pledged wholly or in part.

The creditor who comes after is no longer deluded. When the property is evidently engaged for a sum equivalent to its value, he who would still accept of it as a pledge would be extremely imprudent ; we must indeed presume that such cases will rarely happen.

This change in legislation has necessarily produced another, in the regulations respecting the rights of creditors, in cases of failure.

The second mortgagee cannot count upon the efficacy of his pledge, until after the full payment of the first, out of the mortgaged property ; he has, then, no right to complain, if the exercise of his right be restrained to what remains after that payment.

Thus, the first mortgage creditor having received a part of his demand at the expense of the mass of simple contract debts, the latter must be reimbursed out of the value of the mortgaged property when it exceeds the amount due on the first mortgage.

These are the rules established in the project, rules which appear to accord with equity, which in no manner change the legitimate hopes of posterior mortgagees, and which protect all the rights of the simple contract creditors, who, almost always, in failures, are the most deeply interested, and the most unfortunate.

In regulating what concerns mortgage creditors, we could not lose sight of the other classes ; it was necessary to provide, that the dividends be promptly made, that payments be made only un-

der the superintendence of the commissioner, on the presentment of the titles, and with valid acquittances: this is the object of Chapter X.

A single article in this chapter may require a short explanation; it is article 127.

It permits, by the general consent of the creditors, a composition for the sale or transfer of the debts due to the insolvent, and the causes of action accrued to him, which have not been collected or enforced.

In failures, there are often outstanding debts, due to the insolvent, which are not easily collected, either because they are disputable, or because the debtor is not perfectly solvent; much time and expense would be necessary for a collection, which is often, indeed, uncertain. Prosecutions of this nature are much more easily carried on by an individual, than by assignees, who would almost always expend more than the sum recovered: the general interest of the creditors requires, that the assignees should terminate their business as soon as possible, and that they should be able to transfer claims, the prosecution of which would be either too long or too difficult.

But this rule may be liable to abuse, against which it is necessary to guard. The assignees cannot treat for the transfer of debts of this description, except under the authority of the tribunal of commerce, and it is particularly necessary that the insolvent should be present: he has a deep interest in opposing disadvantageous compositions of this kind, since he is constantly bound to his creditors as long as they remain unpaid.

I shall say only a word on the subject of Chapter XI. *of the mode of selling the real estate of the bankrupt.*

It must be sold under the authority of the commissioner, and in the mode prescribed by the Code Napoleon, for the sale of the property of minors; it suffices to observe to you, that by this mode, there will be expedition and economy in an operation formerly so tedious and expensive.

The interest which unfortunate creditors inspire, has, however, induced us to adopt yet a new precaution, in order to ensure the full value of the personal property sold. Every creditor shall have a right to bid during the eight days which immediately follow the adjudication. It was, however, necessary to regulate the exercise of this right, and not to discourage buyers by the prospect of bids which would be only made to raise the price of the articles.

No bid shall be received, if it be under the tenth part of the price of the thing set up.

I hasten to come to the last subject which I have undertaken to discuss—the *rights of wives*, in cases of failure.

It is but too true, that a great portion of the failures which have afflicted commerce, in these latter times, have been occasioned by great imprudence or alarming dissipation.

It has been too often forgotten, that the prosperity of trade must be founded, not only upon good faith, but upon economy—and upon order, without which there can be no economy.

Real credit always depends upon the opinion which good conduct and intelligence inspire. Who are the men who have acquired great reputation in trade; whose signature, respected to the very extremity of the globe, made their orders executed with a punctuality which sovereigns themselves could not always command?

Individuals, whose beginning was obscure, who, by continued labours, happy conceptions, prudent combinations, profound meditations on their profession, and above all, by a constant modesty, an unalterable loyalty, have obtained the confidence of every civilized nation.

God forbid that I should be supposed to entertain the thought that these estimable men have no successors! but truly, what do we now most frequently behold?

Men, who embark in their profession with the grossest carelessness; who carry with them an avidity incompatible with delicacy; who think to obtain credit by concealing a real deficiency

of means, under the deceitful appearance of a chimerical ease; who commence by ruining themselves, in order to be enabled to drag along with them, into the abyss of disgrace, others equally imprudent.

I know, gentlemen, that the laws alone are not, perhaps, adequate to arrest entirely these disorders; and that when opulence, destitute of merit, still obtains consideration which merit without opulence cannot reach, few persons have force enough to resist the current which drives them along.

This, however, is the evil, for which it is necessary to seek a remedy; and what means more efficacious to obtain it, than to make the good conduct of the husband concur with the interest of the wife, to call in aid of morals the influence of the sex, who can never have too great a one, when they are not unmindful of the virtues which render them so estimable in society, and which are also their most durable charms!

It is in this spirit that the articles on the rights of wives have been meditated. Too often a merchant, in marrying, has acknowledged a large marriage portion with his wife, which he never received; either because he wished to hold out the illusion of a fictitious capital, or that he might make a distant preparation of the means of one day conveying away his fortune from his legitimate creditors.

The husband made a settlement on his wife equal to the portion which he pretended to have received. Often, also, he purchased real estate in the name of his wife, which he paid for with his own personal property, or rather the property of his creditors.

Finally, by fraudulent separations, and simulated contracts, the furniture, jewels, plate, and every thing of the kind, became the property of the wife; and at the moment of a catastrophe, often premeditated, the wife, with her fictitious dowry, her marriage settlements, her indemnities for debts, which she had never paid, and her pretended acquisitions, absorbed all the estate of her husband.



The unfortunate creditors were condemned to pass their days in privation and tears, whilst the wife of their debtor was leading a life of tranquillity, luxury, and idleness. All the arts contributed to decorate the palace which she inhabited; numerous attendants anticipated her desires, and flattered her vanities, and, whenever she deigned to bestow some feeble assistance on a small number of the unfortunate, not by beneficence, for beneficence dwells not with robbery, but in the hope that the benedictions of some unhappy beings would stifle the maledictions of the multitude, those pretended acts of humanity were likewise proclaimed with ostentation, by officious writers even in foreign courts.

It is at length time to put an end to these scandals.—And at what period can we flatter ourselves of being able to stop them with more success?

When the sovereign himself in his private life gives an example of all the social and domestic virtues, when with unceasing vigilance he endeavours to establish a rigorous order in all the parts of an immense administration, has he not a right to expect that individuals, restored to the practice of the modest virtues, and to the habit of a regular life, will give security to society, and at the same time prepare for themselves and their families lasting enjoyments, because they will be founded upon wise and pure calculations, and unattended with remorse?

I resume the consideration of the provisions in regard to the rights of women.

The wife of the insolvent may withdraw what she has really brought to her husband; she can pretend to nothing beyond this.

This is the basis of the articles which are submitted to you.

Thus, all the real property, which constituted wholly or in part the wife's marriage portion, or which may have come to her by inheritance or donation, shall be at her disposal; it shall be the same with respect to jewels, furniture, and plate, which she can prove to have been given to her in the marriage contract, or derived by inheritance; but she must substantiate her claims by legal proof and regular inventories; besides, her demands must

necessarily be subject to the mortgages with which the property may be charged, either in consequence of her voluntary act or a judicial decision against her.

Under whatever regulation the marriage may have been contracted, the law presumes that all the personal property without exception belongs to the husband, and we shall no longer see the real creditors repulsed by the production of fraudulent instruments, fabricated for the purpose of conveying to the wife an estate which she ought not to have.

In vain also shall the wife claim an indemnity for pretended debts, paid by her for her husband, if she do not prove, by legal instruments, the origin of the property which she pretends to have employed for that purpose. Would it not be equally shameful, for the wife as well as the husband, to put in a claim to property the source of which should be unknown?

For the same reason, all the pretended acquisitions of the wife are reputed to have been made by the husband, and paid for out of his personal estate.

With what scandal do we see women, who were married without fortune, and without any real marriage portion, under the protection of pretended acquisitions, actually in possession of all the estate of a husband delinquent by many millions towards his creditors!

Finally, gentlemen, the wife of a merchant, who shall pretend to have brought money or other personal property to her husband, or who shall claim either the restitution of her property, alienated during the marriage, or an indemnity for debts contracted with her husband, shall have a lien for all these objects, only on the real estate which actually belonged to the husband at the period of the marriage.

Every thing acquired since by the husband, could only have been at the expense, and with the property, of his creditors; it would be revolting that the wife of the bankrupt should come and carry off this property, and thus triumphantly escape from a catastrophe of which she was perhaps the primary cause.

You readily perceive, gentlemen, that the settlements made upon the wife, by the husband after marriage, cannot be claimed by her in case of his failure; that was indeed one of the great causes of the ruin of creditors, who saw with despair a woman whom all the world knew without fortune, tranquilly enjoy an immense estate of which they had been despoiled.

What we have said in regard to women married to men engaged in commerce is equally applicable to women who shall have married the sons of merchants, not having at the period of their marriage any profession, or determined condition, and who afterwards became merchants themselves.

It is evident, that to escape from the strict justice of the rules which we have established, these sons of merchants would marry without mentioning in their contract a profession, which, however, they would desire to assume, and which in effect they would eventually take.

This reflection is not applicable to the wife whose husband had, at the time of the marriage, a determined profession, other than that of a merchant; she ought, in this case, to enjoy all the rights of a mortgagee granted by the Code Napoleon; she took no husband engaged in commerce, and her union was formed under another law.

It was, however, foreseen, that this exception might be abused; it is, therefore, declared, that the wife cannot avail herself of the advantage of it, if her husband has entered into trade within the year immediately succeeding the marriage.

I consider it quite superfluous to call your attention to the articles of the project, which provide that the wife who should have conveyed away, concealed, or secreted the goods of her husband, or who should have taken a direct part in acts of fraud against creditors, may be prosecuted as an accomplice in the bankruptcy.

You now know, gentlemen, all that part of the law, the exposition of which has been intrusted to me. The spirit of justice has dictated these provisions, the lively sentiment of indignation, which cannot be suppressed against robberies, has never influenced the calm of the magistrate who meditates the law.

The wife who shall not be found an accomplice, may take back every thing which can be proved actually to belong to her. She will receive this act of justice from the unfortunate mass of creditors; they will not afterwards have the right of requiring any thing from her. But will she consider herself released from all obligation? Will she enjoy without secret pain all that belongs to her, whilst a crowd of unhappy beings are languishing in want, through the faults of the man whose companion she is? And will she not hear from the bottom of her heart a voice unceasingly crying to her—the law has restored your property, but honour forbids you to accept the whole of it; the sacrifice which the law could not command you to make, humanity ought to inspire; you have not offended against the law, but you have proved that you are destitute of sensibility, and you know not the means of honouring yourself by acts of beneficence.

Doubt it not, gentlemen, this voice will not always be stifled; we shall again see, I venture to assure you, elevated souls, which, in a state of personal humiliation, will not fail to acquire titles to glory. Happy the children, who, having cause to bemoan the faults of a father, may cherish with pride the memory of her who gave them existence!

# EXPOSITION OF THE MOTIVES

OF

## BOOK IV.

OF

### THE COMMERCIAL CODE.

*Presented to the Legislative Body, by Messrs. Marot, Pelet, and  
Corvetto, Counsellors of State.*

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SITTING OF THE FOURTH SEPTEMBER, 1807.

GENTLEMEN,

HIS majesty has charged us to present for your sanction, the fourth book of the commercial code—of *commercial jurisdiction*.

This book treats of the organization of the tribunals of commerce, of their competency, of the mode of procedure, and of that of proceeding before the courts of appeal.

The organization of the tribunals of commerce differs little from what it has been for several years past. They shall have presidents, judges and substitutes. The limitation of the number of judges, as well as that of the tribunals, and of the places in which they are to hold their sessions, have not appeared to appertain to the law; and in effect, his majesty can alone better judge of the wants and localities of the different departments.

It is not to be apprehended that he will diminish the actual number of these tribunals, of almost the whole of which their ancient existence evinces the utility: besides, he already acknowledges the services they have rendered to commerce; and counts upon their future usefulness.

Every Frenchman engaged in commerce, is actually called to the election of the judges. Their office shall be confided solely to merchants, heads of the most ancient houses, and the most estimable for property, and the spirit of order and economy. Their

names shall be placed on a list of distinction, made out by the prefects, and approved by the minister of the interior. This mode ought to ensure the continuance of a good choice.

The question whether the presidents and judges may be indefinitely re-elected has been determined in the negative. The law provides that they shall not be re-elected until after a year's interval.

It is not to be dissembled that in pronouncing this decision, the law may sometimes deprive, during a year, a tribunal of one, or more of its most distinguished members; nor can it be concealed that a tribunal very near us, in which probity and intelligence for a long time have presided, may most sensibly feel this privation; but ought we to place some other judges, equally upright and enlightened, in the situation of elective incapacity? For it cannot be denied, that if a re-election without any interval were permitted, every judge who should not obtain it, would consider himself wounded in his honour. Now, ought the law to place in this situation men who abandon their personal affairs to devote themselves to a painful and gratuitous service? It has moreover appeared to us that if the perpetuity of functions, in the civil and criminal tribunals, was a benefit to suitors, it were more conformable to the interests of commerce, that merchants should be successively called to judge their peers. It is then for the interest of commerce and of merchants, who are called by public esteem to the function of judges, that the law has decided that question.

That same interest demands prompt decisions, certain execution; the form of procedure ought to be simple as well in the first instance, as in case of appeal; the facts should be reported with clearness and simplicity, and as much as possible by the parties themselves, in order that the judge may be the better enabled to appreciate their probity. It is in this spirit that the third and fourth titles of the book, now under consideration, are framed. Article 647. of the fourth title, forbids the courts of appeal to grant prohibitions or delays, in the execution of the judgments of the commercial tribunals, even when their competency should be called in question; it is in this spirit that article

627. of the law which we now present to you, interdicts the employment of advocates ; a provision, gentlemen, which has already received your sanction, in the code of civil procedure, article 414. ; but the article 627. just cited, organizes the execution. It is in this spirit, that article 625. establishes, for the city of Paris solely, commercial guards for the execution of judgments authorizing personal imprisonment. The law only restores life to an establishment regretted by the commerce of Paris, because the guards procured security in the execution, without employing means too severe.

The organization of the tribunals of commerce, the form of procedure before them, was the easiest part of the law which we now submit to you. The second title, relating to competency, has presented more important questions.

Since the publication of the ordinance of 1673, but particularly since 1789, commerce has become the profession of a very great number of Frenchmen ; the will alone gives the right of carrying on commerce. Some devote themselves habitually to trade ; others are only accidentally engaged in transactions which, under certain relations, are really commercial. Hence, it had been concluded, that the competency of the tribunals of commerce should be determined by the fact which gave rise to the controversy ; that if this fact was a commercial transaction, he who was a party to it, whatever might be the cause, whatever might be its character, was justiciable by a tribunal of commerce ; that in defining commercial acts, the competency of the tribunals of commerce would be invariably regulated ; that afterwards passing to the consideration of those commercial acts, the following ought to be regarded as such, namely, all acts of buying, selling, and exchanging of produce and merchandise—all signatures given on bills of exchange, or promissory notes—all enterprises in manufactures, &c. &c. Thus, the competency would have been determined by the fact alone, without exception.

The rigorous application of this principle has appeared to present serious inconveniences, inasmuch as every Frenchman, performing any act of traffic, more or less extensive, would be,

by this single fact, subject to the jurisdiction of the tribunals of commerce.

For example, a magistrate buys goods for the use of his family; some circumstance induces him to dispose of a part of them. In this instance there has been a buying and selling, and, consequently, a trade in merchandise: the principle, then, that the fact determines the competency, would render any dispute which might arise in consequence of the sale made by the magistrate, cognisable by the tribunal of commerce; yet in itself the act of the magistrate is not a real commercial transaction; it is a civil act, which, in case of controversy, ought to bring the parties before the civil tribunals.

The law then could not admit the general principle, but it has considered that the Frenchman, not a merchant, exercising a civil or military profession, that the capitalist who purchases merchandise or produce beyond his real wants, does an act commercial in its nature, since the quantity of the article bought shows the intention of reselling; which constitutes traffic. Nevertheless there is yet only a presumption; the fact that he has bought beyond his real wants, is not recognised; the law must have considered this bargain as an act of trade, and leave to the judges the examination of the fact, and the consequences thence to be drawn.

But if the law must have declared that such an act is reputed to be a commercial transaction, are there not certain others which are so evidently of that character, that there is no examination necessary to determine them?—Yes, undoubtedly; but it is in considering, as the law does, the quality of the persons who have contracted—and, in effect, it is clear that the engagements and transactions between merchants, traders and bankers are positive acts of commerce, unless they relate to produce and merchandise bought for their private use; for, in the latter case, it is not as merchants that they have contracted, but as citizens.

It follows, from these considerations, that the competency of the tribunals of commerce must be determined, either by the nature of the act, about which there may be a controversy, or by the quality of the person.



Thus the tribunals of commerce will have jurisdiction—of all controversies relative to the engagements and transactions between merchants, traders and bankers—between all persons for acts relative to commerce;—and the law defines what are reputed to be commercial acts.

It would be superfluous to detail to you the definitions comprised in articles 632. and 633. of the law; their clearness renders it unnecessary, and we pass on to the provisions in articles 636. and 637. which relate to what is declared in article 632. on bills of exchange. We are obliged to refer to article 112. of the first book of this code; it declares that all bills of exchange containing either a fictitious name, quality, domicile, place where drawn or where payable, are reputed only simple promises. The motives for this article are, that certain circumstances change the nature of the engagement subscribed, under the title of a *bill of exchange*; that then it is only a civil obligation, the cognizance of which appertains to the civil tribunals; consequently, article 636. provides that in such cases, upon the demand of the defendant, the tribunal of commerce shall be bound to remit the cause to the civil tribunal.

But it may happen that the bill of exchange, reputed a simple promise, conformably to the terms of article 112. bears, at the same time, the signature of individuals who are merchants, and also of others who are not merchants; article 637. then requires, that the tribunal of commerce should take cognizance of it, but that it shall not pronounce judgment of personal imprisonment against the individuals who are not merchants, unless they should have engaged themselves for some operation of commerce, traffic, exchange, banking, or brokerage. In this second case, except that of a commercial engagement, there is a civil obligation on the part of the signature not mercantile, and a commercial obligation on the part of the mercantile signature; it has appeared to us that the latter ought to draw the other with it before the commercial judges.

The same articles 636. and 637. the provisions of which we have just noticed, in relation to bills of exchange, considered as simple

premises, also regulated the competency of the tribunals of commerce, as to what concerns promissory notes.

It was demanded that promissory notes should, in every thing, be assimilated to bills of exchange, both in respect to jurisdiction and imprisonment of the person, whatever may be the character of the signature.

After a long discussion, the reasons in favour of this opinion have appeared to be more specious than just, and in consequence of the principles adopted in the regulation of the competency of the tribunals of commerce, the following rules have been ordained.

Promissory notes bearing the signatures of individuals, not merchants, and not originating in operations of commerce, traffic, exchange, banking, or brokerage, are civil obligations which cannot be cognizable by the tribunals of commerce.

Promissory notes bearing, at the same time, the signatures of mercantile individuals and of those not mercantile, are, at the same time, commercial obligations for the former, and civil obligations for the latter; the interest of commerce requires, in this case, that the tribunals of commerce should have cognizance of them; but they must not pronounce judgment of personal imprisonment against the individuals not merchants, unless they have engaged themselves for some operation of commerce, traffic, exchange, banking, or brokerage.

The application of these principles grants to commerce every thing that its interest, well understood, required of the law.—To go further, would be to place individuals, who are not merchants, in the situation of not being able any longer to make use of a negotiable instrument, which, when used in moderation, may be advantageous to them in social transactions.—To go further, would be to extend the right of personal imprisonment, when it is for the interest of the state, and conformable to our moral habits, that it be limited.

Finally, this right of imprisonment of the person, would, if extended, give another direction to loans for civil purposes, a direction contrary to the interests of families, inasmuch as it

would offer greater facilities to convert real estate into moveables.

It is, therefore, from considerations of public order that the law has refused to assimilate, in every respect, the promissory note to the bill of exchange, but at the same time, it has consulted the peculiar interest of commerce, which has always been the object we have endeavoured to attain.

With this view the law provides, article 639. that the tribunals of commerce shall decide definitively all causes in which the sum demanded shall not exceed a thousand francs; (200 dollars;) also, all those in which the parties justiciable by these tribunals, shall have declared their willingness to be judged definitively and without appeal.

With this view, the law grants to the tribunals of commerce a very extensive jurisdiction in failures, the judgment of oppositions to a composition, when the rights of the opponent are founded on acts or operations cognizable by them, the ratification of a composition between the insolvent and his creditors.

With this view, the tribunals of commerce shall have cognizance of actions against factors, merchants' clerks, or servants, on account of acts solely relating to the traffic of the merchant for whom they have acted, or to whom they are attached; of actions arising from bills drawn by the receivers, payers, collectors, and other persons accountable for public money.

With this view, in short, the bills subscribed by a merchant are presumed to have been made on account of his commerce, and those of the receivers, payers, collectors, and others accountable for public money, are presumed to have been made for their administration, when no other cause is specified on the face of them.

It remains for us, gentlemen, to call your attention to the provision of the law, which excepts, from the competency of the tribunals of commerce, the actions brought against a landholder, cultivator, or farmer, for the sale of the produce of his farm; it justifies itself, for it is evident, that these sales are not similar to those made by a merchant.

## MOTIVES

*Of the Project of the Law fixing the period in which the Commercial Code shall be in force.*

SITTING OF THE EIGHTH SEPTEMBER, 1807.

GENTLEMEN,

THE code of commerce rises by the side of the Code Napoleon. New benefits are now to be conferred upon France. Whilst victory was marching under the French eagles, on the borders of the astonished Vistula, commercial legislation in silence received improvements which experience had dictated.

Commerce is going to take a new direction ; the laws will be in harmony with its wants, with its habits, with its real interests. These laws will be simple and easy ; they display no severity but against fraud ; they will correct imprudence ; they will chastise misconduct ; they will relieve misfortune. The insulting disgrace of failures will no longer exist, to revolt the just and virtuous man. Commercial transactions will be protected under the ægis of probity, and the security of enlightened tribunals, which will themselves do honour to commerce. The industrious artisan in his shop, the honest merchant in the midst of his operations, the intrepid navigator, from the bosom of the tempests, will bless the august and cherished name of the great man, who, after having recompensed and avenged our country, prepares for it all the sources of a permanent prosperity, who knows repose only in the change of labour, and whose happiness consists only in the felicity of his people !

But it is time, gentlemen, to accelerate these benefits. His majesty has thought that the first day of the coming year ought to be distinguished as the era of the execution of the commercial code.

The period is, undoubtedly, not distant, when victory or peace will again open the seas, and the ordinary channels of commerce,

to the nations of the world. The code which you will have adopted will then become the common law of Europe.

Associated for a long time in the pacific labours of the greatest of princes, you will doubtless eagerly elevate this new monument to his glory ; and what greater recompense than to be able to say to yourselves—we have contributed to the good of our country, under the auspices of Napoleon !

# CODE DE COMMERCE.

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## LIVRE PREMIER.

### DU COMMERCE EN GENERAL.

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#### TITRE PREMIER.

##### *Des Commerçants.*

Article 1. SONT commerçants ceux qui exercent des actes de commerce, et en font leur profession habituelle.

Art. 2. Tout mineur émancipé de l'un et de l'autre sexe, âgé de dix-huit ans accomplis, qui voudra profiter de la faculté que lui accorde l'art. 487. du Code Napoléon, de faire le commerce, ne pourra en commencer les opérations, ni être réputé majeur, quant aux engagements par lui contractés pour fait de commerce, 1<sup>o</sup> s'il n'a été préalablement autorisé par son père, ou par sa mère, en cas de décès, interdiction, ou absence du père, ou, à défaut du père et de la mère, par une délibération du conseil de famille, homologuée par le tribunal civil; 2<sup>o</sup> si, en outre, l'acte d'autorisation n'a été enregistré et affiché au tribunal de commerce du lieu où le mineur veut établir son domicile.

Art. 3. La disposition de l'article précédent est applicable aux mineurs même non commerçants, à l'égard de tous les faits qui sont déclarés faits de commerce par les dispositions des articles 632. et 633. du titre deuxième du livre IV.

# COMMERCIAL CODE.

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## BOOK I.

### OF COMMERCE IN GENERAL.

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#### TITLE I.

##### *Of Merchants.*

Article 1. Merchants are they who carry on commerce and make it their habitual profession.

Art. 2. Every emancipated minor,<sup>(1)</sup> of either sex, of the age of eighteen years complete, who desires to avail himself of the right granted in article 487. of the Code Napoleon, to carry on trade, must comply with the regulations hereinafter mentioned, before he can commence mercantile business, or be considered as having arrived at majority with respect to any commercial engagements contracted by him; 1st. He must be previously authorized by his father, or by his mother, in case of the death, interdiction,<sup>(2)</sup> or absence of the father, or in default of both father and mother, by the consent of the family council,<sup>(3)</sup> approved by the civil tribunal; 2d. The act of authorization aforesaid, must be registered and posted up in the hall of the tribunal of commerce of the place where the minor intends to fix his domicile.

Art. 3. The provisions in the preceding article are applicable to minors, even though they are not merchants by profession, with respect to all acts which are declared to be commercial by articles 632. and 633. of Title II. of Book IV. of this code.

Art. 4. La femme ne peut être marchande publique sans le consentement de son mari.

Art. 5. La femme, si elle est marchande publique, peut, sans l'autorisation de son mari, s'obliger pour ce qui concerne son négoce; et audit cas, elle oblige aussi son mari, s'il y a communauté entre eux.

Elle n'est pas réputée marchande publique, si elle ne fait que détailler les marchandises du commerce de son mari; elle n'est réputée telle que lorsqu'elle fait un commerce séparé.

Art. 6. Les mineurs marchands, autorisés comme il est dit ci-dessus, peuvent engager et hypothéquer leurs immeubles.

Ils peuvent même les aliéner, mais en suivant les formalités prescrites par les articles 457. et suivants du Code Napoléon.

Art. 7. Les femmes marchandes publiques peuvent également engager, hypothéquer et aliéner leurs immeubles.

Toutefois leurs biens stipulés dotaux, quand elles sont mariées sous le régime dotal, ne peuvent être hypothéqués ni aliénés que dans les cas déterminés et avec les formes réglées par le Code Napoléon.

## TITRE II.

### *Des Livres de Commerce.*

Art. 8. Tout commerçant est tenu d'avoir un livre-journal qui présente, jour par jour, ses dettes actives et passives, les opérations de son commerce, ses négociations, acceptations ou endossements d'effets, et généralement tout ce qu'il reçoit et paie, à quelque titre que ce soit : et qui énonce, mois par mois, les sommes employées à la dépense de sa maison : le tout indépendamment des autres livres usités dans le commerce, mais qui ne sont pas indispensables.



Art. 4. A married woman cannot be a *sole trader* without the consent of her husband.

Art. 5. A married woman, if a sole trader, may, without the authorization of her husband, make herself liable for whatever concerns her mercantile transactions; and in that case, she also renders her husband <sup>so there be a community of goods(4)</sup> between them.

She is not considered a sole trader if she only retail the merchandise of her husband; she is considered such only when she carries on a separate trade.

Art. 6. *Mineurs* who are merchants, authorized as above mentioned, may engage or hypothecate their real property.

They may even alienate it, by observing the formalities prescribed by articles 457. and following, of the Code Napoleon.

Art. 7. Married women who are sole traders may also engage, hypothecate, and alienate their real property.

Nevertheless, their property stipulated as dotal, when they are married under the *dotal regulation*,<sup>(5)</sup> cannot be hypothecated, nor alienated, except in cases determined, and with the formalities prescribed by the Code Napoleon.

## TITLE II.

### *Of Commercial Books.*

Art. 8. Every merchant is required to keep a journal, or day-book, which shall exhibit daily his debts and credits, his commercial transactions, negotiations, acceptances, or endorsements; and generally all his receipts and payments, on whatsoever account they may be. This book shall also show, monthly, the sums expended for his household: the whole independently of other books used in trade, but which are not indispensably necessary.

Il est tenu de mettre en liasse les lettres missives qu'il reçoit, et de copier sur un registre celles qu'il envoie.

Art. 9. Il est tenu de faire, tous les ans, sous seing privé, un inventaire de ses effets mobiliers et immobiliers, et de ses dettes actives et passives, et de le copier, année par année sur un registre spécial à ce destiné.

Art. 10. Le livre-journal et le livre des inventaires seront paraphés et visés une fois par année.

Le livre de copies de lettres ne sera pas soumis à cette formalité.

Tous seront tenus par ordre de dates, sans blancs, lacunes, ni transports en marge.

Art. 11. Les livres dont la tenue est ordonnée par les articles 8 et 9 ci-dessus, seront cotés et paraphés, et visés soit par un des juges des tribunaux de commerce, soit par le maire ou un adjoint, dans la forme ordinaire, et sans frais. Les commerçants seront tenus de conserver ces livres pendant dix ans.

Art. 12. Les livres de commerce, régulièrement tenus, peuvent être admis par le juge pour faire preuve entre commerçants pour faits de commerce.

Art. 13. Les livres que les individus faisant le commerce sont obligés de tenir, et pour lesquels ils n'auront pas observé les formalités ci-dessus prescrites, ne pourront être représentés ni faire foi en justice, au profit de ceux qui les auront tenus; sans préjudice de ce qui sera réglé au livre *des faillites et banqueroutes*.

Art. 14. La communication des livres et inventaires ne peut être ordonnée en justice que dans les affaires de succession, communauté, partage de société, et en cas de faillite.

Art. 15. Dans le cours d'une contestation, la représentation des livres peut être ordonnée par le juge, même d'office, à l'effet d'en extraire ce qui concerne le différent.

Art. 16. En cas que les livres dont la représentation est offerte, requise, ou ordonnée, soient dans des lieux éloignés du tribunal

He is required to place on file the letters he receives, and to copy in a register those which he writes and sends away.

Art. 9. He is required to make, annually, under his signature, an inventory of his property real and personal, of his debts receivable and payable, and to cause the same to be transcribed every year in a register specially appropriated to that purpose.

Art. 10. The journal or day-book and the register of inventories shall be *marked* and certified(6) once a year.

The letter-book shall not be subject to this formality.

The whole shall be kept in the order of dates, without blanks, chasms, or marginal references.

Art. 11. The books, the keeping of which are ordered by article 8. and 9. above mentioned, shall be marked and certified either by one of the judges of the tribunal of commerce, or by the mayor or his assistant, in the ordinary form, and free of expense. Merchants are required to preserve these books for the space of ten years.

Art. 12. Account books, regularly kept, may be admitted by the judge as evidence of commercial transactions between merchants.

Art. 13. The books which individuals engaged in commerce are obliged to keep, and in regard to which they shall not have observed the formalities above prescribed, cannot be offered nor be entitled to credit in a court of justice, in favour of those who have kept them. This without prejudice to the regulations which will be made in the third book of this code concerning *failures and bankruptcies*.

Art. 14. Books and inventories cannot be ordered to be brought into court except in cases of inheritance, community of property, adjustment of partnership accounts, and failure.

Art. 15. In the course of a controversy at law, the exhibition of the books may be ordered by the judge, even *ex officio*, for the purpose of extracting from them what concerns the matter in dispute.

Art. 16. In case the books, the exhibition of which is offered, required, or ordered, be in a place remote from the tribunal

saisi de l'affaire, les juges peuvent adresser une commission rogatoire au tribunal de commerce du lieu, ou déléguer un juge de paix pour en prendre connaissance, dresser un procès-verbal du contenu, et l'envoyer au tribunal saisi de l'affaire.

Art. 17. Si la partie aux livres de laquelle on offre d'ajouter foi, refuse de les représenter, le juge peut déférer le serment à l'autre partie.

### TITRE III.

#### DES SOCIÉTÉS.

##### SECTION PREMIERE.

##### *Des diverses Sociétés, et de leurs Règles.*

Art. 18. Le contrat de société se règle par le droit civil, par les lois particulières au commerce, et par les conventions des parties.

Art. 19. La loi reconnaît trois espèces de sociétés commerciales :

La société en nom collectif.

La société en commandite.

La société anonyme.

Art. 20. La *société en nom collectif* est celle que contractent deux personnes ou un plus grand nombre, et qui a pour objet de faire le commerce sous une raison sociale.

Art. 21. Les noms des associés peuvent seuls faire partie de la raison sociale.

Art. 22. Les associés en nom collectif, indiqués dans l'acte de société, sont solidaires pour tous les engagements de la société, encore qu'un seul des associés ait signé, pourvu que ce soit sous la raison sociale.

which has cognizance of the affair, the judges may address a *regulatory* commission(7) to the tribunal of commerce of the place, or delegate a justice of peace to take information of the matter, make a report of the contents of the books, and send the same to the tribunal where the cause is pending.

Art. 17. If the party whose books are appealed to in proof of any fact, refuse to exhibit them, the judge may receive the oath of the opposite party in evidence.

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### TITLE III.

#### OF PARTNERSHIPS.

##### SECTION I.

*Of the different kinds of Partnership, and the Regulations in regard to them.*

Art. 18. The partnership contract is regulated by the civil law,(8) by the laws peculiar to commerce, and by the agreement between the parties.

Art. 19. The law recognises three kinds of partnerships, to wit:

Partnership under a collective name.

*Commandite*, or limited partnership.(9)

Anonymous partnership.

Art. 20. Partnership under a collective name is that which two or more persons contract, for the purpose of carrying on trade under a particular firm.

Art. 21. The names of the partners can alone form a part of the firm.

Art. 22. The partners by collective name, indicated in the partnership agreement, are jointly and severally responsible for all the engagements of the firm, although only one of the partners may have signed, provided it be done under the firm.

Art. 23. La *société en commandite* se contracte entre un ou plusieurs associés responsables et solidaires, et un ou plusieurs associés simples bailleurs de fonds, que l'on nomme *commanditaires*, ou *associés en commandite*.

Elle est régie sous un nom social, qui doit être nécessairement celui d'un ou plusieurs des associés responsables et solidaires.

Art. 24. Lorsqu'il y a plusieurs associés solidaires et en nom, soit que tous gèrent ensemble, soit qu'un ou plusieurs gèrent pour tous, la société est, à la fois, société en nom collectif à leur égard, et société en commandite à l'égard des simples bailleurs de fonds.

Art. 25. Le nom d'un associé commanditaire ne peut faire partie de la raison sociale.

Art. 26. L'associé commanditaire n'est passible des pertes que jusqu'à concurrence des fonds, qu'il a mis ou dû mettre dans la société.

Art. 27. L'associé commanditaire ne peut faire aucun acte de gestion, ni être employé pour les affaires de la société, même en vertu de procuration.

Art. 28. En cas de contravention à la prohibition mentionnée dans l'article précédent, l'associé commanditaire est obligé solidairement, avec les associés en nom collectif, pour toutes les dettes et engagements de la société.

Art. 29. La *société anonyme* n'existe point sous un nom social : elle n'est désignée par le nom d'aucun des associés.

Art. 30. Elle est qualifiée par la désignation de l'objet de son entreprise.

Art. 31. Elle est administrée par des mandataires à temps révocables, associés ou non associés, salariés ou gratuits.

Art. 23. The *commandite* partnership is contracted between one or more partners jointly and severally responsible, and one or more other partners who are merely furnishers of funds, that is, who only bring a certain capital into the common stock, and are denominated *commanditaires*, or partners in *commandite*.

It is conducted under a social name, or firm, which must necessarily consist of the names of several of the responsible partners.

Art. 24. When there are several responsible partners whose names are in the firm, whether they all act together, or one or more of them transact the business of the partnership for the whole, the partnership is, at the same time, a partnership under a collective name in regard to them, and a *commandite* partnership in regard to the mere furnishers of capital, that is, the *commanditary* partners.

Art. 25. The name of a commanditary partner cannot enter into the firm.

Art. 26. The commanditary partner is not liable for losses any farther than to the extent of the funds, which he has furnished or engaged to deliver into the partnership stock.

Art. 27. The commanditary partner cannot transact any business on account of the partnership, nor be employed for that purpose, even in virtue of a power of attorney.

Art. 28. In case of infringement of the prohibition mentioned in the preceding article, the commanditary partner shall be held liable, with the collective and responsible partners, for all the debts and engagements of the partnership.

Art. 29. The *anonymous partnership* does not exist under a social name or firm: it is not designated by the name of any of the associates.

Art. 30. It is distinguished by the designation of the object of the association.

Art. 31. It is managed by agents or directors who are either stockholders or not, with or without salary, and removable from office at a certain period.

Art. 32. Les administrateurs ne sont responsables que de l'exécution du mandat qu'ils ont reçu.

Ils ne contractent, à raison de leur gestion, aucune obligation personnelle ni solidaire relativement aux engagements de la société.

Art. 33. Les associés ne sont passibles que de la perte du montant de leur intérêt dans la société.

Art. 34. Le capital de la société anonyme se divise en actions et même en coupons d'action d'une valeur égale.

Art. 35. L'action peut être établie sous la forme d'un titre au porteur.

Dans ce cas, la cession s'opère par la tradition du titre.

Art. 36. La propriété des actions peut être établie par une inscription sur les registres de la société.

Dans ce cas, la cession s'opère par une déclaration de transfert inscrite sur les registres, et signée de celui qui fait le transport, ou d'un fondé de pouvoir.

Art. 37. La société anonyme ne peut exister qu'avec l'autorisation du gouvernement, et avec son approbation pour l'acte qui la constitue; cette approbation doit être donnée dans la forme prescrite pour les réglemens d'administration publique.

Art. 38. Le capital des sociétés en commandite pourra être aussi divisé en actions, sans aucune autre dérogation aux règles établies pour ce genre de sociétés.

Art. 39. Les sociétés en nom collectif ou en commandite doivent être constatées par des actes publics ou sous signatures privées, en se conformant, dans ce dernier cas, à l'article 1325. du Code Napoléon.

Art. 40. Les sociétés anonymes ne peuvent être formées que par des actes publics.



**Art. 32.** The directors are responsible only for the execution of the trust committed to them.

They do not contract, in virtue of their administration, any personal obligation, nor become jointly and severally responsible for the engagements of the association.

**Art. 33.** The associates or stockholders are liable only to the extent of the interest, that is, to the amount of their shares in the association.

**Art. 34.** The capital stock of the anonymous partnership is divided into shares, and even into parts of shares of an equal value.

**Art. 35.** The shares in the association may be evidenced by certificates in favour of the bearer.

In this case, they are transferred by the mere delivery of the certificate.

**Art. 36.** The right to shares may be established by an entry on the books of the association.

In this case, a transfer is effected by a declaration entered on the register, and signed by the person who makes the transfer, or his attorney duly authorized.

**Art. 37.** Anonymous partnerships cannot exist without the authorization of the government, and with its approbation, by an act constituting the company or association; this approbation must be given in the mode prescribed for the regulations of the public administration.

**Art. 38.** The capital of *commandite*, or limited partnerships, may also be divided into shares, without any other derogation of the rules established for that kind of partnership.

**Art. 39.** Partnerships under a collective name, and *commandite* partnerships, must be verified and acknowledged by written instruments publicly attested, or under private signature.(10) conforming, in the latter case, to article 1325. of the Code Napoleon.(11)

**Art. 40.** Anonymous partnerships cannot be formed but by instruments of writing publicly attested.

Art. 41. Aucune preuve par témoins ne peut être admise contre et outre le contenu dans les actes de société, ni sur ce qui serait allégué avoir été dit avant l'acte, lors de l'acte ou depuis, encore qu'il s'agisse d'une somme au-dessous de cent cinquante francs.

Art. 42. L'extrait des actes de société en nom collectif et en commandite, doit être remis, dans la quinzaine de leur date, au greffe du tribunal de commerce de l'arrondissement dans lequel est établie la maison du commerce social, pour être transcrit au registre, et affiché pendant trois mois dans la salle des audiences.

Si la société a plusieurs maisons de commerce situées dans divers arrondissements, la remise, la transcription, et l'affiche de cet extrait, seront faites au tribunal de commerce de chaque arrondissement.

Ces formalités seront observées, à peine de nullité à l'égard des intéressés; mais le défaut d'aucune d'elles ne pourra être opposé à des tiers par les associés.

Art. 43. L'extrait doit contenir,

Les noms, prénoms, qualités, et demeures des associés autres que les actionnaires ou commanditaires.

La raison de commerce de la société.

La désignation de ceux des associés autorisés à gérer, administrer, et signer pour la société.

Le montant des valeurs fournies ou à fournir par actions ou en commandite.

L'époque où la société doit commencer, et celle où elle doit finir.

Art. 44. L'extrait des actes de société est signé, pour les actes publics, par les notaires; et pour les actes sous seing privé, par tous les associés, si la société est en nom collectif, et par les associés solidaires ou gérants, si la société est en commandite, soit qu'elle se divise ou ne se divise pas en actions.

Art. 45. L'acte du gouvernement qui autorise les sociétés

**Art. 41.** No parol evidence can be admitted to contradict or explain the meaning of the articles of association, nor in relation to any thing alleged to have been spoken previously, at the time of, or subsequent to, the execution of the articles, though the sum in dispute should be less than a hundred and fifty francs, (about thirty dollars.)<sup>(12)</sup>

**Art. 42.** An abstract of the articles of partnership, whether collective or *commandite*, must be delivered within fifteen days from their date, to the clerk of the tribunal of commerce of the district in which the commercial house of the partnership has been established, in order to be transcribed on the register, and posted up for the space of three months in the hall of the court.

If the partnership have several commercial houses situated in different districts, the abstract aforesaid must be delivered, registered, and posted up for three months at the tribunal of commerce of each district.

These formalities shall be observed under pain of nullity, in respect to the parties interested; but the default of any of them cannot be available to the partners against third persons.

**Art. 43.** The abstract must contain,

The names, surnames, qualities, and places of residence of the partners, others than the stockholders of associations or *commanditary* partners.

The commercial firm of the partnership.

The designation of those among the partners authorized to transact, manage, and sign for the partnership.

The amount of the capital furnished, or to be furnished, by shares, or in *commandite* partnership.

The period when the partnership is to commence, and when to end.

**Art. 44.** The abstract of the articles of partnership, when publicly attested, is to be signed by a notary public—when made under private signature, by all the partners, if the partnership be under a collective name, and by the acting and responsible partners, if the partnership be *commandite*, whether divided into shares or not.

**Art. 45.** The act of the government authorizing an anony-

anonymes, devra être affiché avec l'acte d'association, et pendant le même temps.

Art. 46. Toute continuation de société, après son terme expiré, sera constatée par une déclaration des co-associés.

Cette déclaration, et tous actes portant dissolution de sociétés avant le terme fixé pour sa durée par l'acte qui l'établit, tout changement ou retraite d'associés, toutes nouvelles stipulations ou clauses, tout changement à la raison de société, sont soumis aux formalités prescrites par les articles 42, 43, et 44.

En cas d'omission de ces formalités, il y aura lieu à l'application des dispositions pénales de l'art. 42. 3<sup>e</sup> alinéa.

Art. 47. Indépendamment des trois espèces de sociétés ci-dessus, la loi reconnaît les *associations commerciales en participation*.

Art. 48. Ces associations sont relatives à une ou plusieurs *opérations de commerce* ; elles ont lieu pour les objets, dans les formes, avec les proportions d'intérêt et aux conditions convenus entre les participants.

Art. 49. Les associations en participation peuvent être constatées par la représentation des livres, de la correspondance, ou par la preuve testimoniale, si le tribunal juge qu'elle peut être admise.

Art. 50. Les associations commerciales en participation ne sont pas sujettes aux formalités prescrites pour les autres sociétés.

## SECTION II.

*Des Contestations entre Associés, et de la manière de les décider.*

Art. 51. Toute contestation entre associés, et pour raison de la société, sera jugée par des arbitres.

ness partnership must be posted up, with the contract of association, and for the same space of time.

Art. 46. Every continuation of a partnership after the expiration of its term, must be verified by the declaration of the partners.

This declaration, as well as every act producing a dissolution of the partnership, before the term fixed for its duration by the original agreement between the parties, and every change or retirement of partners, every new stipulation or clause, every change in the firm of the partnership, are subject to the formalities prescribed by articles 42, 43. and 44.

In case of omission of these formalities, the penalties mentioned in the third paragraph of article 42. will be incurred.

Art. 47. Independently of the three kinds of partnerships above mentioned, the law recognises *commercial associations in participation*, or joint concerns for a specific object or purpose.

Art. 48. These associations relate to one or more *commercial operations*; they take place for objects, in the manner, with the proportions of interest, and on the conditions, agreed upon between the parties.

Art. 49. Joint concerns may be verified by the exhibition of the books and correspondence of the parties, or by parol testimony, if the tribunal deem it admissible.

Art. 50. Commercial associations in participation, or joint concerns, are not subject to the formalities prescribed for the other partnerships.

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## SECTION II.

*Of the Controversies between Partners, and the mode of adjusting them.*

Art. 51. All controversies between partners on matters relating to the partnership, shall be decided by arbitrators.

Art. 52. Il y aura lieu à l'appel du jugement arbitral ou au pourvoi en cassation, si la renonciation n'a pas été stipulée. L'appel sera porté devant la cour d'appel.

Art. 53. La nomination des arbitres se fait,

Par un acte sous signature privée.

Par acte notarié.

Par acte extrajudiciaire.

Par un consentement donné en justice.

Art. 54. Le délai pour le jugement est fixé par les parties, lors de la nomination des arbitres; et s'ils ne sont pas d'accord sur le délai, il sera réglé par les juges.

Art. 55. En cas de refus de l'un ou de plusieurs des associés de nommer des arbitres, les arbitres sont nommés d'office par le tribunal de commerce.

Art. 56. Les parties remettent leurs pièces et mémoires aux arbitres, sans aucune formalité de justice.

Art. 57. L'associé en retard de remettre les pièces et mémoires, est sommé de le faire dans les dix jours.

Art. 58. Les arbitres peuvent, suivant l'exigence des cas, proroger le délai pour la production des pièces.

Art. 59. S'il n'y a renouvellement de délai, ou si le nouveau délai est expiré, les arbitres jugent sur les seules pièces et mémoires remis.

Art. 60. En cas de partage, les arbitres nomment un sur-arbitre, s'il n'est nommé par le compromis; si les arbitres sont discordants sur le choix, le sur-arbitre est nommé par le tribunal de commerce.

Art. 61. Le jugement arbitral est motivé.

Il est déposé au greffe du tribunal de commerce.

Il est rendu exécutoire sans aucune modification, et transcrit sur les registres, en vertu d'une ordonnance du président du tri-

Art. 52. Application may be made to the court to set aside the award of arbitrators, unless the parties have, by stipulation, renounced the right of appeal.(13) The appeal must be carried before the court of appeal.

Art. 53. The appointment of the arbitrators is made,

By an instrument under private signature.

By an instrument certified by a notary.

By an extrajudicial act.

By the consent of the parties, confirmed by a rule of court.

Art. 54. The period within which the award is to be made, is fixed by the parties, when the arbitrators are appointed; and if they cannot agree on the time, it shall be determined by the judges.

Art. 55. In case of refusal, on the part of one or more of the partners, to name arbitrators, they shall be appointed *ex officio* by the tribunal of commerce.

Art. 56. The parties shall lay their papers and accounts before the arbitrators without any judicial formality.

Art. 57. The party who delays the delivery of his papers and accounts to the arbitrators, shall be notified to do it within ten days.

Art. 58. The arbitrators may, according to the exigency of the case, enlarge the time for the production of the papers.

Art. 59. If no enlargement of time take place, or if the additional delay has expired, the arbitrators are to make up their award from the papers and accounts before them.

Art. 60. In case of disagreement the arbitrators are to appoint an umpire, if not already named by the parties; and if the arbitrators cannot agree on the choice of an umpire, he is to be appointed by the tribunal of commerce.

Art. 61. The award must set forth the reasons on which it is grounded.

It must be filed in the clerk's office of the tribunal of commerce.

It has the force of a final judgment without any modification, and is transcribed on the registers in virtue of an ordinance of

bunal, lequel est tenu de la rendre pure et simple, et dans le délai de trois jours du dépôt au greffe.

Art. 62. Les dispositions ci-dessus sont communes aux veuves, héritiers, ou ayant cause des associés.

Art. 63. Si des mineurs sont intéressés dans une contestation pour raison d'une société commerciale, le tuteur ne pourra renoncer à la faculté d'appeler du jugement arbitral.

Art. 64. Toutes actions contre les associés non liquidateurs et leurs veuves, héritiers ou ayant cause, sont prescrites cinq ans après la fin ou la dissolution de la société, si l'acte de société qui en énonce la durée ou l'acte de dissolution a été affiché et enregistré conformément aux articles 42, 43, 44. et 46. et si, depuis cette formalité remplie, la prescription n'a été interrompue, à leur égard, par aucune poursuite judiciaire.

#### TITRE IV.

##### *Des Séparations de Biens.*

Art. 65. Toute demande en séparation de biens sera poursuivie, instruite, et jugée conformément à ce qui est prescrit au Code Napoléon, Liv. III. Tit. V. Chap. II. Section III. et au code de procédure civile, 2<sup>e</sup> partie, Liv. I. Titre VIII.

Art. 66. Tout jugement qui prononcera une séparation de corps, ou un divorce entre mari et femme, dont l'un serait commerçant, sera soumis aux formalités prescrites par l'article 872. du code de procédure civile ; à défaut de quoi, les créanciers seront tes-



the president of the tribunal, who is required to render it absolute within the space of three days from the time of its delivery into the clerk's office.

Art. 62. The provisions above mentioned are equally applicable to the widows, heirs, and legal representatives of the partners.

Art. 63. If minors be interested in a controversy arising from a commercial partnership, the guardian cannot renounce the right of appeal from the award of the arbitrators.

Art. 64. All actions against partners who have not undertaken the liquidation of the accounts,<sup>(14)</sup> their widows, heirs, and representatives, are barred after the lapse of five years from the termination or dissolution of the partnership, if the agreement mentioning its duration, or a stipulation for its dissolution, has been posted up and registered conformably to articles 42, 43, and 44.; and if, since the observance of that formality, the limitation aforesaid has not been interrupted, in respect to the parties, by some judicial proceeding.

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#### TITLE IV.

##### *Of Separation of Property between Husband and Wife.*

Art. 65. Every demand of separation of property<sup>(15)</sup> must be instituted, prosecuted and decided according to the rules and forms prescribed in the Code Napoleon, Book III. Title V. Chapter II. Section III. articles 1443. and 1447. and in the code of civil procedure, Book I. Title VIII. articles 865. and 874.

Art. 66. Every judgment of separation or divorce between husband and wife, one of whom being a merchant or trader, shall be subject to the formalities prescribed by article 872. of the code of civil procedure; in default of which the creditors

jours admis à s'y opposer, pour ce qui touche leurs intérêts, et à contredire toute liquidation qui en aurait été la suite.

Art. 67. Tout contrat de mariage entre époux dont l'un sera commerçant, sera transmis par extrait, dans le mois de sa date, aux greffes et chambres désignés par l'article 872. du code de procédure civile, pour être exposé au tableau, conformément au même article.

Cet extrait annoncera si les époux sont mariés en communauté, s'ils sont séparés de biens, ou s'ils ont contracté sous le régime dotal.

Art. 68. Le notaire qui aura reçu le contrat de mariage sera tenu de faire la remise ordonnée par l'article précédent, sous peine de cent francs d'amende, et même de destitution et de responsabilité envers les créanciers, s'il est prouvé que l'omission soit la suite d'une collusion.

Art. 69. Tout époux séparé de biens ou marié sous le régime dotal, qui embrasserait la profession de commerçant postérieurement à son mariage, sera tenu de faire pareille remise dans le mois du jour où il aura ouvert son commerce, à peine, en cas de faillite, d'être puni comme banqueroutier frauduleux.

Art. 70. La même remise sera faite, sous les mêmes peines, dans l'année de la publication de la présente loi, par tout époux séparé de biens ou marié sous le régime dotal, qui, au moment de ladite publication, exercerait la profession de commerçant.

shall, at any time, be admitted to oppose it, in regard to their interests, and to contest every liquidation of accounts which may have been the consequence of it.

**Art. 67.** Every marriage contract between parties, either of whom being a merchant or trader, shall be transmitted by abstract, within a month from its date, to the offices and chambers designated by article 872. of the code of civil procedure, in order to be exposed on the tablet, conformably to the same article.

This abstract shall state whether the parties were married under the regulation of community of property, separation of property, or whether they contracted under the dotal regulation.

**Art. 68.** The notary who shall have drawn and certified the contract of marriage, shall be bound to transmit the abstract of the same, ordered by the preceding article, under the penalty of one hundred francs, (20 dollars,) and even of privation of office, and responsibility towards the creditors, if it be proved that the omission was the consequence of collusion.

**Art. 69.** Every husband or wife, married with separation of property, or under the dotal regulation, who should afterwards embrace the profession of a merchant, shall be bound to make the like delivery of the abstract before mentioned, within a month from the day of commencing commercial business, under pain, in case of insolvency, of being punished as a fraudulent bankrupt.

**Art. 70.** The same delivery of the abstract shall be made, under the like penalties, within a year from the publication of the present law, by every husband or wife, who, with separate property, or under the dotal regulation, at the period of the aforesaid publication, should be engaged in commerce.

**TITRE V.****DES BOURSES DE COMMERCE, AGENTS DE CHANGE,  
ET COURTIERS.****SECTION PREMIERE.***Des Bourses de Commerce.*

Art. 71. La bourse de commerce est la réunion qui a lieu, sous l'autorité du gouvernement, des commerçants, capitaines de navire, agents de change, et courtiers.

Art. 72. Le résultat des négociations et des transactions qui s'opèrent dans la bourse, détermine le cours du change, des marchandises, des assurances, du fret ou nolis, du prix des transports par terre ou par eau, des effets publics et autres dont le cours est susceptible d'être coté.

Art. 73. Ces divers cours sont constatés par les agents de change et courtiers, dans la forme prescrite par les règlements de police généraux ou particuliers.

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**SECTION II.***Des Agents de Change et Courtiers.*

Art. 74. La loi reconnaît, pour les actes de commerce, des agents intermédiaires; savoir, les agents de change et les courtiers.

Art. 75. Il y en a dans toutes les villes qui ont une bourse de commerce.

Ils sont nommés par l'empereur.

Art. 76. Les agents de change, constitués de la manière prescrite par la loi, ont seuls le droit de faire les négociations des

## TITLE V.

### OF THE PUBLIC EXCHANGE, EXCHANGE AGENTS, AND BROKERS.

#### SECTION I.

##### *Of the Public Exchange.*

Art. 71. The exchange is the place where, under the authority of government, the merchants, captains of vessels, exchange agents, and brokers, assemble to transact their business.

Art. 72. The result of the negotiations and operations which are effected on the exchange, determines the prices current of bills of exchange, merchandise, insurance, freight, land and water carriage, and of public and other stock susceptible of a market value.

Art. 73. The different prices current are certified by the exchange agents and brokers, in the mode prescribed by the general and particular police regulations.

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#### SECTION II.

##### *Of Exchange Agents and Brokers.*

Art. 74. The law recognises, for commercial transactions, intermediate agents, namely, exchange agents and brokers.

Art. 75. In every town where there is a public exchange, there are exchange agents and brokers.

They are appointed by the emperor.

Art. 76. Exchange agents, authorized in the manner prescribed by law, have the sole right to effect negotiations of public and

effets publics et autres susceptibles d'être cotés; de faire pour le compte d'autrui les négociations des lettres de change ou billets, et de tous papiers commercables, et d'en constater le cours.

Les agents de change pourront faire, concurremment avec les courtiers de marchandises, les négociations et le courtage des ventes ou achats des matières métalliques. Ils ont seuls le droit d'en constater le cours.

Art. 77. Il y a des courtiers de marchandises,

Des courtiers d'assurances.

Des courtiers interprètes et conducteurs de navires.

Des courtiers de transport par terre et par eau.

Art. 78. Les courtiers de marchandises, constitués de la manière prescrite par la loi, ont seuls le droit de faire le courtage des marchandises, d'en constater le cours; ils exercent, concurremment avec les agents de change, le courtage des matières métalliques.

Art. 79. Les courtiers d'assurances rédigent les contrats ou polices d'assurances, concurremment avec les notaires; ils en attestent la vérité par leur signature, certifient le taux des primes pour tous les voyages de mer ou de rivière.

Art. 80. Les courtiers interprètes et conducteurs de navires font le courtage des affrètements: ils ont, en outre, seuls le droit de traduire, en cas de contestations portées devant les tribunaux, les déclarations, chartes-parties, connaissements, contrats, et tous actes de commerce dont la traduction serait nécessaire; enfin, de constater le cours du fret ou du nolis.

Dans les affaires contentieuses de commerce, et pour le service des douanes, ils serviront seuls de truchement à tous étrangers, maîtres de navire, marchands, équipage de vaisseau et autres personnes de mer.

Art. 81. Le même individu peut, si l'acte du gouvernement qui l'institue l'y autorise, cumuler les fonctions d'agent de change, de courtier de marchandises ou d'assurances, et de courtier interprète et conducteur de navires.

Art. 82. Les courtiers de transport par terre et par eau, constitués selon la loi, ont seuls, dans les lieux où ils sont établis,

other stock susceptible of a market value; to negotiate, for account of others, bills of exchange, promissory notes, and other commercial paper, and to certify their current price.

The exchange agents may, concurrently with the merchandise brokers, exercise the brokerage business in negotiations, and in the sales and purchases of coin, bullion, &c. of which they have the sole right to certify the current price.

Art. 77. There are merchandise brokers,

Insurance brokers.

Ship brokers and interpreters.

Brokers for land and water carriage.

Art. 78. The merchandise brokers, authorized in the manner prescribed by law, have the sole right to the brokerage of goods, and of certifying their market price; they exercise, concurrently with the exchange agents, the brokerage of coin and bullion.

Art. 79. The insurance brokers, concurrently with the notaries, draw up the contracts or policies of insurance; they attest them with their signature, and certify the rate of premium for all voyages by sea and inland navigation.

Art. 80. The ship brokers and interpreters exercise the brokerage of freights; they have, besides, the sole right of translating papers to be produced in evidence before the tribunals, such as the protests, charter-parties, bills of lading, contracts, and all commercial instruments of writing, the translation of which may be necessary in a controversy at law; finally, they certify the current price of freights.

In commercial disputes, and for the service of the custom-houses, they alone act as interpreters for all foreigners, merchants, masters and owners of vessels, and other seafaring people.

Art. 81. The same individual may, if the act of the government appointing him give him authority to that effect, unite the functions of exchange agent, merchandise or insurance broker, and of ship broker and interpreter.

Art. 82. The brokers for land and water carriage appointed according to law, have solely, in the places where they are ca-

le droit de faire le courtage des transports par terre et par eau ; ils ne peuvent cumuler, dans aucun cas et sous aucun prétexte, les fonctions de courtiers de marchandises, d'assurances, ou de courtiers conducteurs de navires, désignées aux articles 78, 79, et 80.

Art. 83. Ceux qui ont fait faillite ne peuvent être agents de change ni courtiers, s'ils n'ont été réhabilités.

Art. 84. Les agents de change et courtiers sont tenus d'avoir un livre revêtu des formes prescrites par l'art. 11.

Ils sont tenus de consigner dans ce livre, jour par jour, et par ordre de dates, sans ratures, entrelignes ni transpositions, et sans abréviations ni chiffres, toutes les conditions des ventes, achats, assurances, négociations, et en général de toutes les opérations faites par leur ministère.

Art. 85. Un agent de change ou courtier ne peut, dans aucun cas et sous aucun prétexte, faire des opérations de commerce ou de banque pour son compte.

Il ne peut s'intéresser directement ni indirectement sous son nom, ou sous un nom interposé, dans aucune entreprise commerciale.

Il ne peut recevoir ni payer pour le compte de ses commettants.

Art. 86. Il ne peut se rendre garant de l'exécution des marchés dans lesquels il s'entremet.

Art. 87. Toute contravention aux dispositions énoncées dans les deux articles précédents, entraîne la peine de destitution, et une condamnation d'amende qui sera prononcée par le tribunal de police correctionnelle, et qui ne peut être au-dessus de trois mille francs, sans préjudice de l'action des parties en dommages et intérêts.

Art. 88. Tout agent de change ou courtier destitué en vertu de l'article précédent, ne peut être réintégré dans ses fonctions.

Art. 89. En cas de faillite, tout agent de change ou courtier est poursuivi comme banqueroutier.

Art. 90. Il sera pourvu, par des règlements d'administration publique, à tout ce qui est relatif à la négociation et transmission de propriété des effets publics.



established, the right of exercising the brokerage of transportation by land and water; they cannot, in any case, and under any pretext, unite the functions of merchandise and insurance brokers, or interpreters and ship brokers, designated in articles 78, 79. and 80.

Art. 83. Those who have become insolvent in trade cannot be exchange agents or brokers, unless they have been restored to their rights according to law.

Art. 84. Exchange agents and brokers are required to keep a book in the mode prescribed by article 11.

They must enter in this book, day by day, and in the order of dates, without erasures, interlineations, references, abbreviations, or ciphers, all the conditions of sales, purchases, insurances, negotiations, and in general, all the operations of their business.

Art. 85. An exchange agent or broker cannot, in any case, or under any pretence, effect commercial or banking operations on his own account.

He cannot be interested, directly or indirectly, in his own name, or under a borrowed name, in any commercial enterprise.

He cannot receive or pay any money for the account of his employers.

Art. 86. He cannot become guarantee for the performance of the bargains which he makes for his employers.

Art. 87. Every infraction of the provisions contained in the two preceding articles, incurs the punishment of privation of office, and a fine to be imposed by the tribunal of correctional police, not exceeding the sum of three thousand francs, (600 dollars,) without prejudice to the party injured, of an action for damages.

Art. 88. No exchange agent or broker, dismissed from office in virtue of the preceding article, can be restored to his functions.

Art. 89. In case of failure, every exchange agent or broker shall be prosecuted as a bankrupt.(16)

Art. 90. Provision shall be made, by the regulations of public administration, concerning the negotiation and transfer of property in the public funds.

**TITRE VI.****DES COMMISSIONNAIRES.****SECTION PREMIERE.***Des Commissionnaires en général.*

**Art. 91.** Le commissionnaire est celui qui agit, en son propre nom, ou sous un nom social, pour le compte d'un commettant.

**Art. 92.** Les devoirs et les droits du commissionnaire qui agit au nom d'un commettant, sont déterminés par le Code Napoléon, Livre III. Titre XIII.

**Art. 93.** Tout commissionnaire qui a fait des avances sur des marchandises à lui expédiées d'une autre place pour être vendues pour le compte d'un commettant, a privilège, pour le remboursement de ses avances, intérêts et frais, sur la valeur des marchandises, si elles sont à sa disposition, dans ses magasins, ou dans un dépôt public, ou si, avant qu'elles soient arrivées, il peut constater, par un connaissement ou par une lettre de voiture, l'expédition qui lui en a été faite.

**Art. 94.** Si les marchandises ont été vendues et livrées pour le compte du commettant, le commissionnaire se rembourse, sur le produit de la vente, du montant de ses avances, intérêts et frais, par préférence aux créanciers du commettant.

**Art. 95.** Tous prêts, avances ou paiements qui pourraient être faits sur des marchandises déposées ou consignées par un individu résidant dans le lieu domicile du commissionnaire, ne donnent privilège au commissionnaire ou dépositaire qu'autant qu'il s'est conformé aux dispositions prescrites par le Code Napoléon, Liv. III. Tit. XVII. pour les prêts sur gages ou nantissements.

## TITLE VI.

### OF FACTORS, AGENTS, AND COMMON CARRIERS.

#### SECTION I.

##### *Of Factors in general.*

Art. 91. A factor is he who transacts business in his own name, or under a partnership firm, for account of his employer or principal.

Art. 92. The duties and rights of factors and agents, who act in the name of an employer, are determined by the Code Napoleon, Book III. Title XIII.

Art. 93. Every factor who has made advances on goods consigned to him from another place, to be sold for account of the consignor, has a lien for the amount of said advances, interest, and expenses, on the value of the goods, if they be at his disposal in his warehouse, or in a public depository; or if before their arrival, he can verify the consignment to him by a bill of lading, or transport bill.

Art. 94. If the goods have been sold and delivered for account of the consignor, the factor may reimburse himself from the proceeds of the sale, for the amount of his advances, interest, and expenses, in preference to the creditors of the consignor.

Art. 95. Any loans, advances, or payments, which may be made on goods deposited or consigned by a person residing in the place of domicil of the factor, gives no lien to the factor or depository, unless he has conformed to the regulations prescribed by the Code Napoleon, Book III. Title XVII. respecting loans on pledges or pawns.

## SECTION II.

*Des Commissionnaires pour les transports par terre et par eau.*

Art. 96. Le commissionnaire qui se charge d'un transport par terre ou par eau, est tenu d'inscrire sur son livre-journal la déclaration de la nature et de la quantité des marchandises, et, s'il en est requis, de leur valeur.

Art. 97. Il est garant de l'arrivée des marchandises et effets dans le délai déterminé par la lettre de voiture, hors les cas de la force majeure légalement constatée.

Art. 98. Il est garant des avaries ou pertes de marchandises et effets, s'il n'y a stipulation contraire dans la lettre de voiture, ou force majeure.

Art. 99. Il est garant des faits du commissionnaire intermédiaire auquel il adresse les marchandises.

Art. 100. La marchandise sortie du magasin du vendeur ou de l'expéditeur, voyage, s'il n'y a convention contraire, aux risques et périls de celui à qui elle appartient, sauf son recours contre le commissionnaire et le voiturier chargés du transport.

Art. 101. La lettre de voiture forme un contrat entre l'expéditeur, et le voiturier, ou entre l'expéditeur, le commissionnaire et le voiturier.

Art. 102. La lettre de voiture doit être datée.

Elle doit exprimer,

La nature et le poids ou la contenance des objets à transporter.

Le délai dans lequel le transport doit être effectué.

Elle indique,

Le nom et le domicile du commissionnaire par l'entremise duquel le transports s'opère, s'il y en a un.

Le nom de celui à qui la marchandise est adressée.

Le nom et le domicile du voiturier.

Elle énonce,

Le prix de la voiture.

SECTION II.

*Of Factors for land and water carriage.*

**Art. 96.** A factor who undertakes to transport goods by land or water, is bound to enter on his journal a declaration of their nature and quantity, and, if required, of their value.

**Art. 97.** He is answerable for the arrival of the goods within the time specified in the transport bill, except in cases of irresistible force legally proved.

**Art. 98.** He is answerable for the damage or loss of the goods, unless there be a stipulation to the contrary in the transport bill, or irresistible force.

**Art. 99.** He is answerable for the acts of the intermediate agents to whom the goods are addressed.

**Art. 100.** The merchandise sent from the warehouse of the seller, or the consignor, is transported at the risk of the owner, unless there be a stipulation to the contrary, saving his remedy against the factor, or the common carrier.

**Art. 101.** The transport bill forms a contract between the consignor and the carrier, or between the consignor, the factor, and the carrier.

**Art. 102.** The transport bill must be dated.

It must specify,

The nature and the weight, or measurement, of the objects to be transported.

The time within which the transportation is to be effected.

It states,

The name and domicile of the factor, if any employed, by whose agency the transportation was undertaken.

The name of the person to whom the goods are addressed.

The name and domicile of the carrier.

It mentions,

The price of the transportation.

L'indemnité due pour cause de retard.

Elle est signée par l'expéditeur ou le commissionnaire.

Elle présente en marge les marques et numéros des objets à transporter.

La lettre de voiture est copiée par le commissionnaire sur un registre coté et paraphé sans intervalle et de suite.

### SECTION III.

#### *Du Voiturier.*

Art. 103. Le voiturier est garant de la perte des objets à transporter, hors les cas de la force majeure.

Il est garant des avaries autres que celles qui proviennent du vice propre de la chose, ou de la force majeure.

Art. 104. Si, par l'effet de la force majeure, le transport n'est pas effectué dans le délai convenu, il n'y a pas lieu à indemnité contre le voiturier pour cause de retard.

Art. 105. La réception des objets transportés et le paiement du prix de la voiture éteignent toute action contre le voiturier.

Art. 106. En cas de refus ou contestation pour la réception des objets transportés, leur état est vérifié et constaté par des experts nommés par le président du tribunal de commerce, ou, à son défaut, par le juge de paix et par ordonnance au pied d'une requête.

Le dépôt ou séquestre, et ensuite le transport dans un dépôt public, peut en être ordonné.

La vente peut en être ordonnée en faveur du voiturier, jusqu'à concurrence du prix de la voiture.

Art. 107. Les dispositions contenues dans le présent titre sont communes aux maîtres de bateaux, entrepreneurs de diligences et voitures publiques.

The indemnity to be paid in case of delay.

It is signed by the consignor, or the factor.

It exhibits, in the margin, the marks and numbers of the objects to be transported.

The transport bill must be copied by the factor in a register authentically marked, and kept without blanks in regular succession.

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### SECTION III.

#### *Of Common Carriers.*

Art. 103. Common carriers are answerable for the loss of the goods received for transportation, except in cases of irresistible force.

They are answerable for all damages, other than those which proceed from the perishable nature of the article, or from irresistible force.

Art. 104. If, in consequence of irresistible force, the transportation be not effected within the time agreed upon, no indemnity can be had from the carrier on account of the delay.

Art. 105. The receipt of the objects transported, and the payment of the freight, extinguishes all actions against the carrier.

Art. 106. In case of refusal, or dispute, in regard to the receipt of the articles transported, their condition must be verified by surveyors appointed by the president of the tribunal of commerce, or, in his default, by a justice of peace, conformably to an order made on application to him.

The goods may be ordered to be deposited, or sequestered, and afterwards removed to a public depository.

The sale of the same may be ordered for the benefit of the carrier, to the amount of the cost of transportation.

Art. 107. The provisions contained in the present title are equally applicable to masters of boats, proprietors of stage-coaches, and other public carriages.

Art. 108. Toutes actions contre le commissionnaire et le voiturier, à raison de la perte ou de l'avarie des marchandises, sont prescrites, après six mois, pour les expéditions faites dans l'intérieur de la France, et après un an, pour celles faites à l'étranger ; le tout à compter, pour les cas de perte, du jour où le transport des marchandises aurait dû être effectué, et pour les cas d'avaries, du jour où la remise des marchandises aura été faite, sans préjudice des cas de fraude ou d'infidélité.

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## TITRE VII.

### *Des Achats et Ventes.*

Art. 109. Les achats et ventes se constatent,

Par actes publics.

Par actes sous signature privée.

Par le bordereau ou arrêté d'un agent de change ou courtier, dûment signé par les parties.

Par une facture acceptée.

Par la correspondance.

Par les livres des parties.

Par la preuve testimoniale, dans le cas où le tribunal croira devoir l'admettre.



Art. 108. All actions against factors and carriers, on account of the loss or damage of the goods put under their care, are barred after the lapse of six months, for transports made in the interior of France, and after a year, for those made to foreign places; counting, in cases of loss, from the day when the transportation of the goods ought to have been effected, and in cases of damage, from the day on which the delivery of the goods shall have been made, without prejudice to cases of fraud or negligence.

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## TITLE VII.

### *Of Purchases and Sales.*

Art. 109. Purchases and sales are proved,

By public instruments of writing.

By instruments of writing under private signature.

By the note-book or memorandum of an exchange agent, or broker, duly signed by the parties.

By an invoice, or bill of parcels accepted.

By the correspondence of the parties.

By the books of the parties.

By parol testimony, in cases where the tribunal shall determine it to be admissible.

## TITRE VIII.

### DE LA LETTRE DE CHANGE, DU BILLET A ORDRE, ET DE LA PRESCRIPTION.

#### SECTION PREMIERE. DE LA LETTRE DE CHANGE.

##### § 1<sup>er</sup>. *De la forme de la Lettre de Change.*

Art. 110. La lettre de change est tirée d'un lieu sur un autre.  
Elle est datée.

Elle énonce,

La somme à payer.

Le nom de celui qui doit payer.

L'époque et le lieu où le paiement doit s'effectuer.

La valeur fournie en espèces, en marchandises, en compte, ou de toute autre manière.

Elle est à l'ordre d'un tiers, ou à l'ordre du tireur lui-même.

Si elle est par 1<sup>e</sup>, 2<sup>e</sup>, 3<sup>e</sup>, 4<sup>e</sup>, etc. elle l'exprime.

Art. 111. Une lettre de change peut être tirée sur un individu, et payable au domicile d'un tiers.

Elle peut être tirée par ordre et pour le compte d'un tiers.

Art. 112. Sont réputées simples promesses, toutes lettres de change contenant supposition, soit de nom, soit de qualité, soit de domicile, soit des lieux d'où elles *sont* tirées ou dans lesquels elles *sont* payables.

Art. 113. La signature des femmes et des filles non négociantes ou marchandes publiques sur lettres de change ne vaut, à leur égard, que comme simple promesse.

Art. 114. Les lettres de change souscrites par des mineurs non négociants sont nulles à leur égard, sauf les droits respectifs des parties, conformément à l'art. 1312. du Code Napoléon.

**TITLE VIII.**

**OF BILLS OF EXCHANGE, PROMISSORY NOTES, AND LIMITATIONS OF ACTIONS.**

**SECTION I. OF BILLS OF EXCHANGE.**

**§ I. *Of the Form of Bills of Exchange.***

**Art. 110.** Bills of exchange are drawn from one place on another place.

They are dated.

They specify,

The sum to be paid.

The name of the person who is to pay the same.

The time when, and the place where, the payment is to be made.

The value furnished, whether in money, in merchandise, in account, or in any other manner.

They are drawn to the order of a third person, or to the order of the drawer himself.

If they be drawn in sets of 1, 2, 3, 4, &c. it is so expressed.

**Art. 111.** A bill of exchange may be drawn upon one person, and payable at the domicil of a third.

It may be drawn by the order and for the account of a third person.

**Art. 112.** All bills of exchange, containing a fictitious name, quality, domicil, place where drawn, or where payable, are held to be only simple promises.

**Art. 113.** The signature of a married or single woman, not a sole trader, to a bill of exchange, is equivalent, with respect to her, only to a simple promise.

**Art. 114.** Bills of exchange signed by minors, not merchants, are void in respect to them, saving the rights of the respective parties, conformably to article 1312. of the Code Napoleon.(17)

§ II. *De la Provision.*

Art. 115. La provision doit être faite par le tireur, ou par celui pour le compte de qui la lettre de change sera tirée, sans que le tireur cesse d'être personnellement obligé.

Art. 116. Il y a provision, si, à l'échéance de la lettre de change, celui sur qui elle est fournie est redevable au tireur, ou à celui pour compte de qui elle est tirée, d'une somme au moins égale au montant de la lettre de change.

Art. 117. L'acceptation suppose la provision.

Elle en établit la preuve à l'égard des endosseurs.

Soit qu'il y ait ou non acceptation, le tireur seul est tenu de prouver, en cas de dénégation, que ceux sur qui la lettre était tirée, avaient provision à l'échéance; sinon il est tenu de la garantir, quoique le protêt ait été fait après les délais fixés.

§ III. *De l'Acceptation.*

Art. 118. Le tireur et les endosseurs d'une lettre de change, sont garants solidaires de l'acceptation et du paiement à l'échéance.

Art. 119. Le refus d'acceptation est constaté par un acte que l'on nomme *protêt faute d'acceptation*.

Art. 120. Sur la notification du protêt faute d'acceptation, les endosseurs et le tireur sont respectivement tenus de donner caution pour assurer le paiement de la lettre de change à son échéance, ou d'en effectuer le remboursement avec les frais de protêt et de rechange.

La caution, soit du tireur, soit de l'endosseur, n'est solidaire qu'avec celui qu'elle a cautionné.

Art. 121. Celui qui accepte une lettre de change, contracte l'obligation d'en payer le montant.

§ II. *Of Provision for Payment.*

Art. 115. Provision ought to be made by the drawer, or by the person for whose account the bill of exchange is drawn; but the drawer does not on that account cease to be personally liable.

Art. 116. There has been provision, if, when the bill of exchange becomes due, the person on whom it is drawn is indebted to the drawer, or to the person on whose account it is drawn, in a sum at least equal to the amount of the bill of exchange.

Art. 117. The acceptance is presumption of provision.

It is proof of it in regard to the endorsers.

Whether the bill be accepted or not, the drawer solely is bound to prove, in case of denial, that those on whom the bill was drawn, had provision at the maturity of the bill: otherwise he is held responsible, although the protest may have been made after the fixed time.

§ III. *Of the Acceptance.*

Art. 118. The drawer and endorsers of a bill of exchange, are joint and several sureties for the acceptance and payment of the bill at maturity.

Art. 119. The refusal of acceptance is verified by an act which is called *protest for non-acceptance*.

Art. 120. On the notification of *protest for non-acceptance*, the endorsers and the drawer are respectively bound to give security for the payment of the bill when due, or for reimbursement with expenses of protest and re-exchange.

The security, whether for the drawer, or endorser, is a joint obligation only with the person for whom the security is given.

Art. 121. He who accepts a bill of exchange, contracts an obligation to pay the amount of it.

L'accepteur n'est pas restituable contre son acceptation, quand même le tireur aurait failli à son insu avant qu'il eût accepté.

Art. 122. L'acceptation d'une lettre de change doit être signée.

L'acceptation est exprimée par le mot *accepté*.

Elle est datée, si la lettre est à un ou plusieurs jours ou mois de vue.

Et, dans ce dernier cas, le défaut de date de l'acceptation rend la lettre exigible au terme y exprimé, à compter de sa date.

Art. 123. L'acceptation d'une lettre de change payable dans un autre lieu que celui de la résidence de l'accepteur, indique le domicile où le paiement doit être effectué ou les diligences faites.

Art. 124. L'acceptation ne peut être conditionnelle ; mais elle peut être restreinte quant à la somme acceptée.

Dans ce cas, le porteur est tenu de faire protester la lettre de change pour le surplus.

Art. 125. Une lettre de change doit être acceptée à sa présentation, ou au plus tard dans les vingt-quatre heures, de la présentation.

Après les vingt-quatre heures, si elle n'est pas rendue, acceptée ou non acceptée, celui qui l'a retenue est passible de dommages-intérêts envers le porteur.

#### § IV. *De l'Acceptation par intervention.*

Art. 126. Lors du protêt faute d'acceptation, la lettre de change peut être acceptée par un tiers intervenant pour le tireur, ou pour l'un des endosseurs.

L'intervention est mentionnée dans l'acte de protêt ; elle est signée par l'intervenant.

Art. 127. L'intervenant est tenu de notifier sans délai son intervention à celui pour qui il est intervenu.

The acceptor is not released from his acceptance, even though the drawer should have failed without his knowledge before the acceptance.

Art. 122. The acceptance of a bill of exchange must be signed.

It is expressed by the word *accepted*.

It is dated, if the bill be at one or more days or months after sight.

And, in the latter case, the want of a date to the acceptance, renders the bill payable at the term expressed in it, counting from its date.

Art. 123. The acceptance of a bill of exchange, payable in another place than that of the residence of the acceptor, must indicate the domicile(18) where the payment is to be made, or the protest in case of non-payment.

Art. 124. The acceptance cannot be conditional ; but it may be limited in regard to the sum accepted.

In this case, the holder is bound to have the bill protested for the deficiency.

Art. 125. A bill of exchange must be accepted on its presentment, or, at the latest, within twenty-four hours afterwards.

After the twenty-four hours have elapsed, if it be not returned, accepted or not accepted, he who has retained it is liable for damages towards the holder.

#### § IV. *Of Acceptance supra protest, or by intervention.*

Art. 126. At the time of the protest for non-acceptance, the bill may be accepted by a third person, for the honour of the drawer, or one of the endorsers.

The acceptance *supra* is mentioned in the protest itself, and is signed by the acceptor.

Art. 127. The acceptor *supra* protest is bound to notify without delay, his acceptance to the person for whose honour it was made.

128. *Code de Commerce, Livre I. Titre VIII*

Art. 128. Le porteur de la lettre de change conserve tous ses droits contre le tireur et les endosseurs, à raison du défaut d'acceptation par celui sur qui la lettre était tirée, nonobstant toutes acceptations par intervention.

§ V. *De l'Échéance.*

Art. 129. Une lettre de change peut être tirée à vue;  
à un ou plusieurs jours,  
à un ou plusieurs mois,  
à une ou plusieurs usances,  
à un ou plusieurs jours,  
à un ou plusieurs mois,  
à une ou plusieurs usances,  
à jour fixé ou à jour déterminé;  
en foire.

} de vue;  
}  
} de date ;

Art. 130. La lettre de change à vue est payable à sa présentation.

Art. 131. L'échéance d'une lettre de change  
à un ou plusieurs jours,  
à un ou plusieurs mois,  
à une ou plusieurs usances,  
est fixée par la date de l'acceptation, ou par celle du protêt faute d'acceptation.

} de vue,

Art. 132. L'usage est de trente jours, qui courent du lendemain de la date de la lettre de change.

Les mois sont tels qu'ils sont fixés par le calendrier Grégorien.

Art. 133. Une lettre de change payable en foire est échue la veille du jour fixé pour la clôture de la foire, ou le jour de la foire, si elle ne dure qu'un jour.

Art. 134. Si l'échéance d'une lettre de change est à un jour férié légal, elle est payable la veille.

Art. 135. Tous délais de grace, de faveur, d'usages, ou d'habitudes locales, pour le paiement des lettres de change, sont abrogés.



**Art. 128.** The holder of the bill retains all his rights against the drawer and the endorsers, on account of the non-acceptance by the person on whom the bill was drawn, notwithstanding any acceptance *supra* protest.

**§ V. Of the maturity, or term of payment, of a bill of exchange.**

**Art. 129.** A bill of exchange may be drawn payable at sight.

At one or more days,  
one or more months, } after sight.  
one or more usances, }

At one or more days,  
one or more months, } after date.  
one or more usances, }

On a day fixed or determined.

At or during a fair.

**Art. 130.** A bill of exchange drawn at sight is payable on its presentment.

**Art. 131.** The maturity of a bill of exchange,

At one or more days,  
one or more months, } after sight,  
one or more usances, }

is determined by the date of the acceptance, or by that of the protest for non-acceptance.

**Art. 132.** The usance is thirty days, which run from the day after the date of the bill.

The months are according to the regulation of the Gregorian calendar.

**Art. 133.** A bill of exchange payable at the fair, is at maturity on the evening preceding the day fixed for the closure of the fair, or the day of the fair, if it continue only one day.

**Art. 134.** If a bill of exchange fall due on a legal holyday, it is payable the preceding evening.

**Art. 135.** All days of grace, of favour, of usage, or local custom, for the payment of bills of exchange, are abolished.

§ VI. *De l'Endossement.*

Art. 136. La propriété d'une lettre de change se transmet par la voie de l'endossement.

Art. 137. L'endossement est daté.

Il exprime la valeur fournie.

Il énonce le nom de celui à l'ordre de qui il est passé.

Art. 138. Si l'endossement n'est pas conforme aux dispositions de l'article précédent, il n'opère pas le transport ; il n'est qu'une procuration.

Art. 139. Il est défendu d'antidater les ordres, à peine de faux.

§ VII. *De la Solidarité.*

Art. 140. Tous ceux qui ont signé, accepté ou endossé une lettre de change, sont tenus à la garantie solidaire envers le porteur.

§ VIII. *De l'Aval.*

Art. 141. Le paiement d'une lettre de change, indépendamment de l'acceptation et de l'endossement, peut être garanti par un aval.

Art. 142. Cette garantie est fournie par un tiers, sur la lettre même, ou par acte séparé.

Le donneur d'aval est tenu solidairement et par les mêmes voies que les tireurs et endosseurs, sauf les conventions différentes des parties.

§ IX. *Du Paiement.*

Art. 143. Une lettre de change doit être payée dans la monnaie qu'elle indique.

Art. 144. Celui qui paye une lettre de change avant son échéance, est responsable de la validité du paiement.

**§ VI. Of the Endorsement.**

**Art. 136.** The property in a bill of exchange is transferred by means of endorsement.

**Art. 137.** The endorsement is dated.

It expresses the value received.

It mentions the name of the person to whose order it is payable.

**Art. 138.** If the endorsement be not conformable to the regulations of the preceding article, it does not effect the transfer of the bill; it operates only as a simple power of attorney.(19)

**Art. 139.** It is forbidden to antedate the endorsements, under the penalty attached to forgery.

**§ VII. Of Liability.**

**Art. 140.** All those who have signed, accepted, or endorsed, a bill of exchange, are jointly and severally bound as sureties to the holder.

**§ VIII. Of the Guaranty.**

**Art. 141.** The payment of a bill of exchange, independently of the acceptance and the endorsement, may be secured by a written guaranty.(20)

**Art. 142.** This guaranty is given by a third person, on the bill itself, or in a separate instrument of writing.

The person thus becoming guarantee, is jointly and severally bound with the drawers and endorsers, saving any different stipulations between the parties.

**§ IX. Of the Payment.**

**Art. 143.** A bill of exchange must be paid in the kind of money mentioned in it.

**Art. 144.** He who pays a bill of exchange before it is due, is responsible for the validity of the payment.

Art. 145. Celui qui paye une lettre de change à son échéance et sans opposition, est présumé valablement libéré.

Art. 146. Le porteur d'une lettre de change ne peut être contraint d'en recevoir le paiement avant l'échéance.

Art. 147. Le paiement d'une lettre de change fait sur une seconde, troisième, quatrième, etc. est valable, lorsque la seconde, troisième, quatrième, etc. porte que ce paiement annule l'effet des autres.

Art. 148. Celui qui paye une lettre de change sur une seconde, troisième, quatrième, etc. sans retirer celle sur laquelle se trouve son acceptation, n'opère point sa libération à l'égard du tiers porteur de son acceptation.

Art. 149. Il n'est admis d'opposition au paiement qu'en cas de perte de la lettre de change, ou de la faillite du porteur.

Art. 150. En cas de perte d'une lettre de change non acceptée, celui à qui elle appartient peut en poursuivre le paiement sur une seconde, troisième, quatrième, etc.

Art. 151. Si la lettre de change perdue est revêtue de l'acceptation, le paiement ne peut en être exigé sur une seconde, troisième, quatrième, etc. que par ordonnance du juge, et en donnant caution.

Art. 152. Si celui qui a perdu la lettre de change, qu'elle soit acceptée ou non, ne peut représenter la seconde, troisième, quatrième, etc. il peut demander le paiement de la lettre de change perdue, et l'obtenir par l'ordonnance du juge, en justifiant de sa propriété par ses livres, et en donnant caution.

Art. 153. En cas de refus de paiement, sur la demande formée en vertu des deux articles précédents, le propriétaire de la lettre de change perdue conserve tous ses droits par un acte de protestation.

Cet acte doit être fait le lendemain de l'échéance de la lettre de change perdue.

Il doit être notifié aux tireur et endosseurs dans les formes et délais prescrits ci-après pour la notification du protêt.

Art. 154. Le propriétaire de la lettre de change égarée doit,

**Art. 145.** He who pays a bill of exchange when it is due, and without opposition, or notice of objection, is presumed to be validly discharged.(21)

**Art. 146.** The holder of a bill of exchange cannot be compelled to receive payment for the same before its maturity.

**Art. 147.** The payment of a bill of exchange made on the presentment of a second, third, fourth, &c. of the set, is valid, when the second, third, fourth, &c. expresses that the payment of one renders the others void.

**Art. 148.** He who pays a bill of exchange on the presentment of a second, third, fourth, &c. of a set, without retiring that on which his acceptance is written, is not discharged in regard to third persons holding that accepted bill.

**Art. 149.** Objections to the payment of a bill is not admitted, except in case the bill be lost, or the holder has failed.

**Art. 150.** In case of the loss of a bill of exchange *not accepted*, he to whom it belongs may prosecute for the payment on a second, third, fourth, &c.

**Art. 151.** If the bill of exchange lost be accepted, the payment of it cannot be required on a second, third, fourth, &c. except by the order of the judge, and on giving security.

**Art. 152.** If he who has lost a bill of exchange, whether accepted or not, cannot present a second, third, fourth, &c. of the set, he may demand the payment of the bill lost, and obtain it, by order of a judge, on proving his property therein by his books, and giving security.

**Art. 153.** In case of refusal of payment, on a demand made, in virtue of the two preceding articles, the owner of a bill of exchange lost, preserves all his rights by a regular protest.

This protest must be made the next day after the bill lost became due.

It must be notified to the drawer and endorsers, in the forms and within the time hereafter prescribed for the notice of protest.

**Art. 154.** The owner of a bill of exchange, lost or mislaid,

pour s'en procurer la seconde, s'adresser à son endosseur immédiat, qui est tenu de lui prêter son nom et ses soins pour agir envers son propre endosseur, et ainsi en remontant d'endosseur en endosseur jusqu'au tireur de la lettre. Le propriétaire de la lettre de change égarée supportera les frais.

Art. 155. L'engagement de la caution mentionnée dans les articles 151. et 152. est éteint après trois ans, si, pendant ce temps, il n'y a eu ni demandes, ni poursuites juridiques.

Art. 156. Les paiements faits à compte sur le montant d'une lettre de change, sont à la décharge des tireur et endosseurs.

Le porteur est tenu de faire protester la lettre de change pour le surplus.

Art. 157. Les juges ne peuvent accorder aucun délai pour le paiement d'une lettre de change.

#### § X. *Du paiement par intervention.*

Art. 158. Une lettre de change protestée peut être payée par tout intervenant pour le tireur, ou pour l'un des endosseurs.

L'intervention et le paiement seront constatés dans l'acte de protêt ou à la suite de l'acte.

Art. 159. Celui qui paie une lettre de change par intervention, est subrogé aux droits du porteur, et tenu des mêmes devoirs pour les formalités à remplir.

Si le paiement par intervention est fait pour le compte du tireur, tous les endosseurs sont libérés.

S'il est fait pour un endosseur, les endosseurs subséquents sont libérés.

S'il y a concurrence pour le paiement d'une lettre de change par intervention, celui qui opère le plus de libération est préféré.

Si celui sur qui la lettre était originairement tirée, et sur qui a été fait le protêt faute d'acceptation, se présente pour la payer, il sera préféré à tous autres.

must, in order to procure a second, apply to his immediate endorser, who is bound to lend his name and assistance in an application to his own endorser, and so on, ascending from endorser to endorser, up to the drawer of the bill. The owner of the bill lost or mislaid must bear the expense.

Art. 155. The engagement of the surety mentioned in articles 151. and 152. is extinguished after the lapse of three years, if during that time there has been neither demand nor judicial prosecution.

Art. 156. The payments made on account, as part of the amount of a bill of exchange, operate in discharge of the drawer and endorsers.

The holder is bound to have the bill protested for the balance.

Art. 157. The judges cannot grant any delay for the payment of a bill of exchange.(22)

§ X. *Of payment supra protest, or by intervention.*

Art. 158. A bill of exchange protested may be paid by any intervening person, for the honour of the drawer, or one of the endorsers.

The intervention and the payment must be stated in the certificate of protest, or at the bottom of it.

Art. 159. He who pays a bill of exchange *supra* protest, is substituted in the rights of the holder, and bound to observe the same formalities.

If the payment *supra*-protest, be made for the account of the drawer, all the endorsers are discharged.

If it be made for an endorser, all the subsequent endorsers are discharged.

If there be a concurrence of several persons, in the payment of a bill of exchange *supra* protest, he who effects the most towards the discharge is preferred.

If he on whom a bill was originally drawn, and against whom protest for non-acceptance has been made, presents himself to pay it, he shall be preferred to all others.

## § XI. Des droits et devoirs du Porteur.

Art. 160. Le porteur d'une lettre de change tirée du continent et des îles de l'Europe, et payable dans les possessions européennes de la France, soit à vue, soit à un ou plusieurs jours ou mois ou usances de vue, doit en exiger le paiement ou l'acceptation dans les six mois de sa date, sous peine de perdre son recours sur les endosseurs, et même sur le tireur, si celui-ci a fait provision.

Le délai est de huit mois pour la lettre de change tirée des Echelles du Levant et des côtes septentrionales de l'Afrique sur les possessions européennes de la France, et réciproquement du continent et des îles de l'Europe sur les établissements français aux Echelles du Levant et aux côtes septentrionales de l'Afrique.

Le délai est d'un an pour les lettres de change tirées des côtes occidentales de l'Afrique, jusques et compris le cap de Bonne-Espérance.

Il est aussi d'un an pour les lettres de change tirées du continent et des îles des Indes occidentales sur les possessions européennes de la France, et réciproquement du continent et des îles de l'Europe sur les possessions françaises ou établissements français aux côtes occidentales de l'Afrique, au continent et aux îles des Indes occidentales.

Le délai est de deux ans pour les lettres de change tirées du continent et des îles des Indes orientales sur les possessions européennes de la France, et réciproquement du continent et des îles de l'Europe sur les possessions françaises ou établissements français au continent et aux îles des Indes orientales.

Les délais ci-dessus de huit mois, d'un an et de deux ans, sont doublés en temps de guerre maritime.

Art. 161. Le porteur d'une lettre de change doit en exiger le paiement le jour de son échéance.

Art. 162. Le refus de paiement doit être constaté le lendemain du jour de l'échéance, par un acte que l'on nomme *protêt faute de paiement*.



§ XI. *Of the rights and duties of the holder.*

**Art. 160.** The holder of a bill of exchange drawn from the continent and the European islands, and payable in the European possessions of France, whether at sight, or at one or more days, months, or usances, after sight, must demand payment, or acceptance, within six months from its date, under the penalty of losing his remedy against the endorsers, and even against the drawer, if the latter had made provision for the payment of the bill in the hands of the drawee.

A delay of eight months is allowed for the presentment of a bill drawn from the ports of the Levant, and northern coasts of Africa, on the European possessions of France, and reciprocally, from the continent and European islands, on the French establishments in the Levant, and northern coasts of Africa.

A year is allowed for the presentment of bills drawn on the western coasts of Africa as far as, and including, the Cape of Good Hope.

A year is also allowed for the presentment of bills of exchange drawn from the American continent and West-India islands, on the European possessions of France, and reciprocally, from the European continent and islands, on the French possessions or establishments on the western coasts of Africa, on the American continent and West-India islands.

Two years is allowed for the presentment of bills of exchange drawn from the East-India continent and islands, on the European possessions of France, and reciprocally, from the European continent and islands, on the French possessions or establishments on the East-Indian continent and islands.

The delays above mentioned, of eight months, one year, and two years, are allowed to be doubled in time of maritime war.

**Art. 161.** The holder of a bill of exchange must demand payment on the day of its becoming due.

**Art. 162.** The refusal of payment must be verified, the next day after it became due, by a certificate, which is called a *pro-test for non-payment*.

Si ce jour est un jour férié légal, le protêt est fait le jour suivant.

Art. 163. Le porteur n'est dispensé du protêt faute de paiement, ni par le protêt faute d'acceptation, ni par la mort ou faillite de celui sur qui la lettre de change est tirée.

Dans le cas de faillite de l'accepteur avant l'échéance, le porteur peut faire protester et exercer son recours.

Art. 164. Le porteur d'une lettre de change protestée faute de paiement, peut exercer son action en garantie,

Ou individuellement contre le tireur et chacun des endosseurs,  
Ou collectivement contre les endosseurs et le tireur.

La même faculté existe pour chacun des endosseurs, à l'égard du tireur et des endosseurs qui le précèdent.

Art. 165. Si le porteur exerce le recours individuellement contre son cédant, il doit lui faire notifier le protêt, et, à défaut de remboursement, le faire citer en jugement dans les quinze jours qui suivent la date du protêt, si celui-ci réside dans la distance de cinq myriamètres.

Ce délai, à l'égard du cédant domicilié à plus de cinq myriamètres de l'endroit où la lettre de change était payable, sera augmenté d'un jour par deux myriamètres et demi excédant les cinq myriamètres.

Art. 166. Les lettres de change tirées de France et payables hors du territoire continental de la France, en Europe, étant protestées, les tireurs et endosseurs résidant en France seront poursuivis dans les délais ci-après :

De deux mois pour celles qui étaient payables en Corse, dans l'île d'Elbe ou de Capraja, en Angleterre, et dans les états limitrophes de la France.

De quatre mois pour celles qui étaient payables dans les autres états de l'Europe.

De six mois pour celles qui étaient payables aux échelles du Levant et sur les côtes septentrionales de l'Afrique.

D'un an pour celles qui étaient payables aux côtes occidentales

If this day be a legal holyday, the protest is made on the following day.

Art. 163. The holder is not excused from making the protest for non-payment, neither by the protest for non-acceptance, nor by the death or failure of the person on whom the bill is drawn.

In case of failure of the acceptor, before the bill becomes due, the holder may cause it to be protested, and have recourse to the other parties on the bill.

Art. 164. The holder of a bill of exchange protested for non-payment, may pursue his remedy against the sureties.(23)

Either individually against the drawer and each of the endorsers,

Or jointly against the endorsers and drawer.

The same right exists for each of the endorsers in regard to the drawer, and all the preceding endorsers.

Art. 165. If the holder would pursue his remedy individually against his immediate endorser, or the drawer in case the bill came directly from him, he must give him notice of the protest, and in default of reimbursement, commence his suit against him within fifteen days from the date of the protest, if the said endorser or drawer reside within the distance of five myriametres, (10 leagues, equal to about 25 miles.)(24.)

This period of delay, with respect to the endorser or drawer, domiciled at a greater distance than five myriametres from the place where the bill of exchange was payable, shall be increased one day for every two and a half myriametres exceeding the five before mentioned.

Art. 166. In case of the protest of bills of exchange drawn in France, and payable out of the continental territory of France in Europe, the remedy against the drawers and endorsers residing in France, must be pursued within the following periods, to wit:

Two months for bills payable in Corsica, in the island of Elba, or of Capraja, in England, and in the countries bordering on France.

Four months for those payable in the other states of Europe.

Six months for those payable in the ports of the Levant and on the northern coasts of Africa.

A year for those payable on the western coasts of Africa, as

de l'Afrique, jusques et compris le Cap de Bonne-Espérance, et dans les Indes occidentales.

De deux ans pour celles qui étaient payables dans les Indes orientales.

Ces délais seront observés dans les mêmes proportions, pour le recours à exercer contre les tireurs et endosseurs résidant dans les possessions françaises situées hors d'Europe.

Les délais ci-dessus, de six mois, d'un an, et de deux ans, seront doublés en temps de guerre maritime.

Art. 167. Si le porteur exerce son recours collectivement contre les endosseurs et le tireur, il jouit, à l'égard de chacun d'eux, du délai déterminé par les articles précédents.

Chacun des endosseurs a le droit d'exercer le même recours, ou individuellement, ou collectivement, dans le même délai.

A leur égard, le délai court du lendemain de la date de la citation en justice.

Art. 168. Après l'expiration des délais ci-dessus,

Pour la présentation de la lettre de change à vue, ou à un ou plusieurs jours, ou mois, ou usances, de vue,

Pour le protêt faute de paiement,

Pour l'exercice de l'action en garantie,

Le porteur de la lettre de change est déchu de tous droits contre les endosseurs.

Art. 169. Les endosseurs sont également déchus de toute action en garantie contre leurs cédants, après les délais ci-dessus prescrits, chacun en ce qui le concerne.

Art. 170. La même déchéance a lieu contre le porteur et les endosseurs, à l'égard du tireur lui-même, si ce dernier justifie qu'il y avait provision à l'échéance de la lettre de change.

Le porteur, en ce cas, ne conserve d'action que contre celui sur qui la lettre était tirée.

Art. 171. Les effets de la déchéance prononcée par les trois articles précédents, cessent en faveur du porteur, contre le tireur, ou contre celui des endosseurs qui, après l'expiration des délais

far as, and including, the Cape of Good Hope, and in the West Indies.

Two years for those payable in the East Indies.

These periods of delay are allowed in the same proportions, for pursuing the remedy against the drawers and endorsers residing in the French possessions situated out of Europe.

The above-mentioned delays, of six months, a year, and two years, are allowed to be doubled in time of maritime war.

Art. 167. If the holder pursue his remedy against the endorsers and the drawer jointly, he is allowed, with respect to each of them, the period of delay determined by the preceding articles.

Each of the endorsers has the right of pursuing the same remedy, either individually or jointly, within the same periods of delay.

In respect to them, the time allowed begins to run from the day after the service of judicial citation.

Art. 168. After the expiration of the above-mentioned periods of delay,

For the presentment of a bill of exchange at sight, or at one or more days, or months, or usances, after sight,

For the protest for non-payment,

For the action against the sureties,

The holder of a bill of exchange is barred of all rights against the endorsers.

Art. 169. The endorsers are equally barred from all remedy against prior endorsers, after the expirations of the above periods of delay, each as it respects himself.

Art. 170. The same exception to the right of action of the holder and the endorsers is allowed with respect to the drawer himself, if the latter prove that provision was made for the payment of the bill at its maturity.

The holder in this case preserves his right of action only against the person on whom the bill was drawn.

Art. 171. The effect of the exception or bar to the right of action pronounced in the three preceding articles, ceases in favour of the holder, against the drawer, or against any of the endor-

fixés pour le protêt, la notification du protêt, ou la citation en jugement, a reçu par compte, compensation ou autrement, les fonds destinés au paiement de la lettre de change.

Art. 172. Indépendamment des formalités prescrites pour l'exercice de l'action en garantie, le porteur d'une lettre de change protestée faute de paiement, peut, en obtenant la permission du juge, saisir conservatoirement les effets mobiliers des tireurs, accepteurs et endosseurs.

### § XII. *Des Protêts.*

Art. 173. Les protêts faute d'acceptation ou de paiement, sont faits par deux notaires, ou par un notaire et deux témoins, ou par un huissier et deux témoins.

Le protêt doit être fait,

Au domicile de celui sur qui la lettre de change était payable, ou à son dernier domicile connu.

Au domicile des personnes indiquées par la lettre de change pour la payer au besoin.

Au domicile du tiers qui a accepté par invention.

Le tout par un seul et même acte.

En cas de fausse indication de domicile, le protêt est précédé d'un acte de perquisition.

Art. 174. L'acte de protêt contient,

La transcription littérale de la lettre de change, de l'acceptation, des endossements, et des recommandations qui y sont indiquées.

La sommation de payer le montant de la lettre de change.

Il énonce,

La présence ou l'absence de celui qui doit payer.

Les motifs du refus de payer, et l'impuissance ou le refus de signer.

Art. 175. Nul acte, de la part du porteur de la lettre de change, ne peut suppléer l'acte de protêt, hors le cas prévu par les articles 150. et suivants, touchant la perte de la lettre de change.

ers who, after the expiration of the periods of delay fixed for the protest, the notice of protest, or the commencement of the suit, has received in account, as set-off, or otherwise, the funds destined for the payment of the bill of exchange.

Art. 172. Independently of the formalities prescribed for pursuing the remedy against the sureties, the holder of a bill of exchange protested for non-payment, may, by obtaining the permission of the judge, attach conservatively the personal property of the drawers, acceptors and endorsers.(25)

### § XII. *Of the Protests.*

Art. 173. The protest for non-acceptance, or non-payment, is made by two notaries, or by one notary and two witnesses, or by a bailiff and two witnesses.

The protest must be made,

At the domicile of the person on whom the bill was drawn, or at his last known place of residence.

At the domicile of the person mentioned in the bill of exchange, who is to pay it in case of need.

At the domicile of the acceptor *supra* protest.

The whole in a single instrument of writing.

In case of false indication of domicile, the protest is preceded by a certificate of perquisition or inquiry.

Art. 174. The protest contains,

The literal copy of the bill of exchange, the acceptance, endorsements, and directions therein mentioned.

The demand of payment of the bill of exchange.

It declares,

The presence or absence of the person who ought to pay it.

The motives of refusing payment, and the inability or refusal to sign.

Art. 175. No act on the part of the holder of the bill can supply the place of the protest, except in the cases provided for by articles 150. and following, concerning the loss of a bill of exchange.

Art. 176. Les notaires et les huissiers sont tenus, à peine de destitution, dépens, dommages-intérêts envers les parties, de laisser copie exacte des protêts, et de les inscrire en entier, jour par jour, et par ordre de dates, dans un registre particulier, coté, paraphé, et tenu dans les formes prescrites pour les répertoires.

### § XIII. *Du Rechange.*

Art. 177. Le rechange s'effectue par une retraite.

Art. 178. La retraite est une nouvelle lettre de change, au moyen de laquelle le porteur se rembourse sur le tireur, ou sur l'un des endosseurs, du principal de la lettre protestée, de ses frais, et du nouveau change qu'il paye.

Art. 179. Le rechange se règle, à l'égard du tireur, par le cours du change du lieu où la lettre de change était payable, sur le lieu d'où elle a été tirée.

Il se règle, à l'égard des endosseurs, par le cours du change du lieu où la lettre de change a été remise ou négociée par eux, sur le lieu où le remboursement s'effectue.

Art. 180. La retraite est accompagnée d'un compte de retour.

Art. 181. Le compte de retour comprend,  
Le principal de la lettre de change protestée.

Les frais de protêt et autres frais légitimes, tels que commission de banque, courtage, timbre et ports de lettres.

Il énonce le nom de celui sur qui la retraite est faite, et le prix du change auquel elle est négociée.

Il est certifié par un agent de change.

Dans les lieux où il n'y a pas d'agent de change, il est certifié par deux commerçants.



**Art. 176.** The notaries and bailiffs are bound, under the penalty of loss of office, and of costs and damages to the parties, to take an exact copy of the protests, and to transcribe them at length, day by day, and in the order of the dates, in a particular register, marked and certified, and kept in the forms prescribed for books of record.

§ XIII. *Of Re-exchange.*

**Art. 177.** Re-exchange results from the act of redrawing.

**Art. 178.** Redrawing is when the holder of a bill protested, draws another bill on the drawer, or one of the endorsers, of the former bill, to reimburse himself for the principal of the bill protested, his expenses, and the new exchange which he pays.

**Art. 179.** Re-exchange is regulated, with respect to the drawer, by the current rate of exchange at the place where the bill was payable, on the place whence it was drawn.

It is regulated, with respect to the endorsers, by the rate of exchange at the place where the bill has been remitted or negotiated by them, on the place where the reimbursement is to be effected.

**Art. 180.** The bill redrawn is accompanied with the return account.

**Art. 181.** The return account contains,

The amount of the bill protested.

The expenses of protest, and other lawful charges, such as banker's commission, brokerage, stamp duties, and postage of letters.

It mentions the name of the person on whom the bill for reimbursement is drawn, and the rate of exchange at which it is negotiated.

It is certified by an exchange agent.

In places where there are no exchange agents, it is certified by two merchants.

Il est accompagné de la lettre de change protestée, du protêt, ou d'une expédition de l'acte de protêt.

Dans le cas où la retraite est faite sur l'un des endosseurs, elle est accompagnée, en outre, d'un certificat qui constate le cours de change du lieu où la lettre de change était payable, sur le lieu d'où elle a été tirée.

Art. 182. Il ne peut être fait plusieurs comptes de retour sur une même lettre de change.

Ce compte de retour est remboursé d'endosseur à endosseur respectivement, et définitivement par le tireur.

Art. 183. Les rechanges ne peuvent être cumulés. Chaque endosseur n'en supporte qu'un seul, ainsi que le tireur.

Art. 184. L'intérêt du principal de la lettre de change protestée faute de paiement, est dû à compter du jour du protêt.

Art. 185. L'intérêt des frais de protêt, rechange, et autres frais légitimes, n'est dû qu'à compter du jour de la demande en justice.

Art. 186. Il n'est point dû de rechange, si le compte de retour n'est pas accompagné des certificats d'agents de change ou de commerçants, prescrits par l'article 181.

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## SECTION II. DU BILLET A ORDRE.

Art. 187. Toutes les dispositions relatives aux lettres de change, et concernant,

l'échéance,

l'endossement,

la solidarité,

l'aval,

le paiement,

le paiement par intervention,

le protêt,

les devoirs et droits du porteur,

le rechange ou les intérêts,

It is accompanied with the bill of exchange protested, the protest, or a certified copy of it.

In case the bill for reimbursement be drawn on one of the endorsers, it is accompanied besides with a certificate attesting the course of exchange at the place where the bill protested was payable, on the place whence it was drawn.

Art. 182. There can be made only one return account on the same bill of exchange.

This return account is reimbursed from endorser to endorser, and finally by the drawer.

Art. 183. The re-exchanges cannot be accumulated. Each endorser, as well as the drawer, is charged with only one.

Art. 184. Interest on the principal of the bill of exchange protested for non-payment, is due from the date of the protest.

Art. 185. Interest on the expenses of protest, re-exchange, and other lawful charges, is due only from the day of judicial demand.

Art. 186. No re-exchange is due, if the return account be not accompanied with the certificates of an exchange agent, or of merchants, as prescribed in article 181.

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## SECTION II. OF PROMISSORY NOTES.

Art. 187. All the provisions relative to bills of exchange, and concerning,

The maturity of the bill,

The endorsement,

The joint and several responsibility,

The guaranty,

The payment,

The payment *supra* protest,

The protest,

The duties and rights of the holder,

The re-exchange, or expenses,(26)

sont applicables aux billets à ordre, sans préjudice des dispositions relatives aux cas prévus par les articles 636, 637. et 638. du Titre II. Livre IV.

Art. 188. Le billet à ordre est daté.

Il énonce,

La somme à payer.

Le nom de celui à l'ordre de qui il est souscrit.

L'époque à laquelle le paiement doit s'effectuer.

La valeur qui a été fournie en espèces, en marchandises, en compte, ou de toute autre manière.

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### SECTION III. DE LA PRESCRIPTION.

Art. 189. Toutes actions relatives aux lettres de change, et à ceux des billets à ordre souscrits par des négociants, marchands ou banquiers, ou pour faits de commerce, se prescrivent par cinq ans, à compter du jour du protêt, ou de la dernière poursuite juridique, s'il n'y a eu condamnation, ou si la dette n'a été reconnue par acte séparé.

Néanmoins, les prétendus débiteurs seront tenus, s'ils en sont requis, d'affirmer, sous serment, qu'ils ne sont plus redevables; et leurs veuves, héritiers ou ayant-cause, qu'ils estiment de bonne foi qu'il n'est plus rien dû.

are applicable to promissory notes, without prejudice to the regulations relative to the cases provided for by articles 636, 637. and 638. of Title II. Book IV.

**Art. 188.** Promissory notes are dated.

They mention,

The sum to be paid.

The name of the person to whose order they are made.

The time of payment.

The value received, whether in money, in merchandise, on account, or in any other manner.

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### SECTION III. OF LIMITATIONS OF ACTIONS.

**Art. 189.** All actions relative to bills of exchange and promissory notes, signed by merchants, traders, or bankers, or for commercial transactions, are limited to five years, counting from the day of the protest, or from that of the last judicial proceeding, if there has been no judgment, or if the debt has not been acknowledged by a separate instrument in writing.

Nevertheless, persons presumed to be debtors shall be bound, if required, to declare under oath, that they are no longer indebted; and their widows, heirs, or assigns, that they verily believe that nothing remains due.(27)

END OF THE FIRST BOOK.

## LIVRE II.

### DU COMMERCE MARITIME.

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#### TITRE PREMIERE.

##### *Des Navires et autres Bâtimens de mer.*

**Art. 190.** Les navires et autres bâtimens de mer sont meubles. Néanmoins ils sont affectés aux dettes du vendeur, et spécialement à celles que la loi déclare privilégiées.

**Art. 191.** Sont privilégiées, et dans l'ordre où elles sont rangées, les dettes ci-après désignées :

1° Les frais de justice et autres, faits pour parvenir à la vente et à la distribution du prix.

2° Les droits de pilotage, tonnage, cale, amarrage et bassin ou avant-bassin.

3° Les gages du gardien et frais de garde du bâtiment depuis son entrée dans le port jusqu'à la vente.

4° Le loyer des magasins où se trouvent déposées les agrès et les apparaux.

5° Les frais d'entretien du bâtiment et de ses agrès et apparaux, depuis son dernier voyage et son entrée dans le port.

6° Les gages et loyers du capitaine et autres gens de l'équipage employés au dernier voyage.

7° Les sommes prêtées au capitaine pour les besoins du bâtiment pendant le dernier voyage, et le remboursement du prix des marchandises par lui vendues pour le même objet.

8° Les sommes dues au vendeur, aux fournisseurs et ouvriers employés à la construction, si le navire n'a point encore fait de

## **BOOK II.**

### **OF MARITIME COMMERCE.**

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#### **TITLE I.**

##### *Of Ships and other Vessels.*

**Article 190.** SHIPS and other vessels are personal property.

Nevertheless, they are liable for the debts of the vendor, and especially for those which the law declares to be privileged.(28)

**Art. 191.** Privileged debts are the following, and in the order in which they are classed:

1st. Judicial costs and other charges incurred in obtaining a sale of the vessel, and the distribution of the price.

2d. The charge for pilotage, tonnage, hold-fees, lashing, basin or outer basin.

3d. The wages of the keeper, and the expenses of guarding the vessel from the time of her entrance into port till the sale.

4th. The storage of her rigging, tackle, and apparel.

5th. The expenses of repairing the vessel, rigging, and apparel, since her entrance into port from her last voyage.

6th. The wages and pay of the captain and crew employed in the last voyage.

7th. The sums lent to the captain for the necessary expenses of the vessel during the last voyage, and the reimbursement of the price of the goods sold by him for the same purpose.

8th. The sums due to the vendor, material men, and workmen employed in the building of the vessel, if she has not yet made a

voyage ; et les sommes dues aux créanciers pour fournitures, travaux, main-d'œuvre, pour radoub, victuailles, armement et équipement avant le départ du navire, s'il a déjà navigué.

9° Les sommes prêtées à la grosse sur le corps, quille, agrès, apparaux, pour radoub, victuailles, armement et équipement avant le départ du navire.

10° Le montant des primes d'assurances faites sur le corps, quille, agrès, apparaux, et sur armement et équipement du navire, dues pour le dernier voyage.

11° Les dommages-intérêts dus aux affrêteurs pour le défaut de délivrance des marchandises qu'ils ont chargées, ou pour remboursement des avaries souffertes par lesdites marchandises par la faute du capitaine ou de l'équipage.

Les créanciers compris dans chacun des numéros du présent article, viendront en concurrence, et au marc le franc, en cas d'insuffisance du prix.

Art. 192. Le privilège accordé aux dettes énoncées dans le précédent article, ne peut être exercé qu'autant qu'elles seront justifiées dans les formes suivantes :

1° Les frais de justice seront constatés par les états de frais arrêtés par les tribunaux compétents.

2° Les droits de tonnage et autres, par les quittances légales des receveurs.

3° Les dettes désignées par les n° 1. 3, 4. et 5. de l'art. 191. seront constatés par des états arrêtés par le président du tribunal de commerce.

4° Les gages et loyers de l'équipage, par les rôles d'armement et de désarmement arrêtés dans les bureaux de l'inscription maritime.

5° Les sommes prêtées et la valeur des marchandises vendues pour les besoins du navire pendant le dernier voyage, par des états arrêtés par le capitaine, appuyés de procès-verbaux signés par le capitaine et les principaux de l'équipage, constatant la nécessité des emprunts.



voyage, and those due to creditors for furniture, work, labour, and for refitting, victualling, outfits, and equipment, before the departure of the vessel, if she has already made a voyage.

9th. The sums lent on bottomry, on the rigging and apparel, for repairing, victualling, outfit, and equipment, before the departure of the vessel.

10th. The amount of the premiums of insurance effected on the hull, rigging, apparel, outfit, and equipment of the vessel, for her last voyage.

11th. The indemnity due to the freighters for not delivering the goods laden on board, or for the damage which the goods may have sustained through the default of the captain or crew.

The creditors comprised in each of the numbers of the present article, shall have a concurrent lien on the vessel for the amount of their demands, and in case of insufficiency, the price of the vessel shall be divided equally among them, in proportion to the amount due to each.

Art. 192. the privilege granted to the creditors mentioned in the preceding article, cannot be maintained, unless their several demands be proved in the following manner :

1st. The judicial costs must be proved, by the list of rates ordered by the competent tribunals.

2d. The duties of tonnage and other charges, by the legal acquittances from the collectors.

3d. The debts designated by Nos. 1. 3. 4. and 5. of article 191. by bills certified by the president of the tribunal of commerce.

4th. The wages and pay of the crew, by the shipping articles and rolls of *equipage*, ordered in the offices of maritime inscription.(29)

5th. The sums lent, and the value of the merchandise sold, to defray the necessary expenses of the vessel during the last voyage, by accounts stated by the captain, and confirmed by reports signed by the captain and the principal officers of the vessel, proving the necessity of the loans.

6° La vente du navire par un acte ayant date certaine, et les fournitures pour l'armement, équipement et victuailles du navire, seront constatées par les mémoires, factures ou états visés par le capitaine et arrêtés par l'armateur, dont un double sera déposé au greffe du tribunal de commerce avant le départ du navire, ou, au plus tard, dans les dix jours après son départ.

7° Les sommes prêtées à la grosse sur le corps, quille, agrès, apparaux, armement et équipement, avant le départ du navire seront constatées par des contrats passés devant notaire, ou sous signatures privées, dont les expéditions ou doubles seront déposés au greffe du tribunal de commerce dans les dix jours de leur date.

8° Les primes d'assurances seront constatées par les polices ou par les extraits des livres des courtiers d'assurances.

9° Les dommages-intérêts dus aux affréteurs seront constatés par les jugements, ou par les décisions arbitrales qui seront intervenues.

Art. 193. Les privilèges des créanciers sont éteints,

Indépendamment des moyens généraux d'extinction des obligations,

Par la vente en justice faite dans les formes établies par le titre suivant,

Ou lorsqu'après une vente volontaire, le navire aura fait un voyage en mer sous le nom et aux risques de l'acquéreur, et sans opposition de la part des créanciers du vendeur.

Art. 194. Un navire est censé avoir fait un voyage en mer,

Lorsque son départ et son arrivée auront été constatés dans deux ports différents et trente jours après le départ.

Lorsque, sans être arrivé dans un autre port, il s'est écoulé plus de soixante jours entre le départ et le retour dans le même port, ou lorsque le navire parti pour un voyage de long cours, a été plus de soixante jours en voyage sans réclamation de la part des créanciers du vendeur.

Art. 195. La vente volontaire d'un navire doit être faite par

6th. The sale of the vessel by an instrument in writing having a certain date,(30) and the supplies for outfits, equipping, and victualling the vessel, must be proved by the accounts, bills, or invoices, examined by the captain and adjusted by the ship's husband, a copy of which must be deposited in the clerk's office of the tribunal of commerce, before the departure of the vessel, or, at the latest, within ten days after her departure.

7th. The sums lent on bottomry, on the body, rigging, apparel, outfits, and equipment of the vessel, before her departure, must be proved by contracts certified by a notary, or under the private signature of the parties, duplicates of which must be deposited in the clerk's office of the tribunal of commerce, within ten days from their date.

8th. The premiums of insurance must be proved by the policies, or by extracts from the books of insurance brokers.

9th. The indemnity due to the freighters must be proved by judicial decisions, or by awards of arbitrators to whom the subject shall have been submitted.

Art. 193. The privileges of creditors are extinguished,  
Independently of the general causes of extinction of obligations,  
By judicial sale, made according to the forms prescribed by the following title of this book,

Or, when after a voluntary sale, the vessel shall have made a sea voyage in the name and at the risk of the purchaser, and without objection on the part of the creditors of the vendor.

Art. 194. A ship is understood to have made a sea voyage,

When her departure and her arrival shall be proved to have taken place, in two different ports, within thirty days after the departure.

When, without having arrived in another port, more than sixty days have elapsed between her departure and return to the same port, or when the vessel, having sailed on a distant voyage, has been more than sixty days at sea, without any claim being made on the part of the creditors of the vendor.

Art. 195. The voluntary sale of a vessel must be made in

écrit, et peut avoir lieu par acte public, ou par acte sous signatures privées.

Elle peut être faite pour le navire entier, ou pour une portion du navire.

Le navire étant dans le port ou en voyage.

Art. 196. La vente volontaire d'un navire en voyage ne préjudicie pas aux créanciers du vendeur.

En conséquence, nonobstant la vente, le navire ou son prix continue d'être le gage desdits créanciers, qui peuvent même, s'ils le jugent convenable, attaquer la vente pour cause de fraude.

## TITRE II.

### *De la Saisie et Vente des Navires.*

Art. 197. Tous bâtiments de mer peuvent être saisis et vendus par autorité de justice, et le privilège des créanciers sera purgé par les formalités suivantes.

Art. 198. Il ne pourra être procédé à la saisie que vingt-quatre heures après le commandement de payer.

Art. 199. Le commandement devra être fait à la personne du propriétaire ou à son domicile, s'il s'agit d'une action générale à exercer contre lui.

Le commandement pourra être fait au capitaine du navire, si la créance est du nombre de celles qui sont susceptibles de privilège sur le navire, aux termes de l'article 191.

Art. 200. L'hussier énonce dans le procès-verbal,

Les nom, profession, et demeure, du créancier pour qui il agit.

Le titre en vertu duquel il procède.

La somme dont il poursuit le paiement.

L'élection de domicile faite par le créancier dans le lieu où siège le tribunal devant lequel la vente doit être poursuivie, et dans le lieu où le navire saisi est amarré.

writing, and may be evidenced by a public instrument, or under private signature.

It may be made for the whole vessel, or a portion of the vessel, whether she be in port or at sea.

Art. 196. The voluntary sale of a vessel at sea, does not operate to the prejudice of the creditors of the vendor.

Consequently, the vessel or her price continues, notwithstanding the sale, as a pledge to the said creditors, who may even, if they deem it proper, contest the legality of the sale on account of fraud.

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## TITLE II.

### *Of the Seizure and Sale of ships and vessels.*

Art. 197. All ships and vessels may be seized and sold by judicial authority,(31) and the privilege of creditors shall be extinguished by the following formalities:

Art. 198. No proceeding in regard to seizure shall take place, until the lapse of twenty-four hours after the judicial order for payment.

Art. 199. The order must be served on the person of the owner of the vessel, or at his domicile, if it relate to a suit against him by a general creditor.

The order may be served on the captain of the vessel, if the debt be of the number of those which are privileged according to the terms of article 191.

Art. 200. The bailiff states in his report,(32)

The name, profession, and residence, of the creditor for whom he acts:

The title or warrant authorizing his proceeding.

The amount of the debt to be recovered.

The domicile chosen by the creditor, in the place where the tribunal is held which has cognizance of the cause, and in that where the vessel seized is moored. (33)

Les noms du propriétaire et du capitaine.

Le nom, l'espèce, et le tonnage du bâtiment.

Il fait l'énonciation et la description des chaloupes, canots, agrès, ustensiles, armes, munitions et provisions.

Il établit un gardien.

Art. 201. Si le propriétaire du navire saisi demeure dans l'arrondissement du tribunal, les saisissant doit lui faire notifier, dans le délai de trois jours, copie du procès-verbal de saisie, et le faire citer devant le tribunal, pour voir procéder à la vente des choses saisies.

Si le propriétaire n'est point domicilié dans l'arrondissement du tribunal, les significations et citations lui sont données à la personne du capitaine du bâtiment saisi, ou, en son absence, à celui qui représente le propriétaire, ou le capitaine; et le délai de trois jours est augmenté d'un jour à raison de deux myriamètres et demi (cinq lieues) de la distance de son domicile.

S'il est étranger et hors de France, les citations et significations sont données ainsi qu'il est prescrit par le code de procédure civile, art. 69.

Art. 202. Si la saisie a pour objet un bâtiment dont le tonnage soit au-dessus de dix tonneaux,

Il sera fait trois criées et publications des objets en vente.

Les criées et publications seront faites consécutivement, de huitaine en huitaine, à la bourse, et dans la principale place publique du lieu où le bâtiment est amarré,

L'avis en sera inséré dans un des papiers publics imprimés dans le lieu où siège le tribunal devant lequel la saisie se poursuit; et s'il n'y en a pas, dans l'un de ceux qui seraient imprimés dans le département.

Art. 203. Dans les deux jours qui suivent chaque crie et publication, il est apposé des affiches,

Au grand mât du bâtiment saisi.

À la porte principale du tribunal devant lequel on procède.

The names of the owner and captain.

The name, description, and tonnage, of the vessel.

He mentions and describes the boats, rigging, utensils, armament, and provisions, belonging to the vessel.

He places a keeper on board.

Art. 201. If the owner of the vessel seized reside within the district of the tribunal, the attaching creditor must, within the space of three days, give him notice of the seizure, accompanying the notice with a copy of the bailiff's report, and citing the owner before the tribunal, to show cause why the sale of the things seized should not be decreed.

If the owner be not domiciled within the district of the tribunal, the notice, report, and citation, are served upon the captain of the vessel seized, or, in his absence, on whomsoever represents the owner or captain; and the delay of three days is increased at the rate of one day for each two myriamètres and a half (about 13 miles) from the distance of his domicil.

If he be a foreigner residing out of France, the citation and notice are given in the manner prescribed by the code of civil procedure, article 69.(34)

Art. 202. If the seizure take place of a vessel of above ten tons burden,

There shall be made three proclamations and advertisements of the intended sale.

The proclamations and advertisements shall be made once a week, for three successive weeks, on the exchange, and in the public square of the place where the vessel is moored.

The seizure and intended sale shall be advertised in one of the newspapers printed in the place where the tribunal is held, which has cognizance of the matter; and if no paper be printed there, in one of those published in the department.

Art. 203. Within two days succeeding each proclamation and publication, the advertisement of the sale must be posted up,

On the mainmast of the vessel seized.

On the outer door of the tribunal where the proceedings are had.

Dans la place publique et sur le quai du port où le bâtiment est amarré, ainsi qu'à la bourse de commerce.

Art. 204. Les criées, publications et affiches doivent désigner,

Les nom, profession, et demeure, du poursuivant.

Les titres en vertu desquels il agit.

Le montant de la somme qui lui est due.

L'élection de domicile par lui faite dans le lieu où siège le tribunal, et dans le lieu où le bâtiment est amarré.

Les nom et domicile du propriétaire du navire saisi.

Le nom du bâtiment, et, s'il est armé ou en armement, celui du capitaine.

Le tonnage du navire.

Le lieu où il est gisant ou flottant.

Le nom de l'avoué du poursuivant.

La première mise à prix.

Les jours des audiences auxquelles les enchères seront reçues.

Art. 205. Après la première criée, les enchères seront reçues le jour indiqué par l'affiche.

Le juge commis d'office pour la vente continue de recevoir les enchères après chaque criée, de huitaine en huitaine, à jour certain fixé par son ordonnance.

Art. 206. Après la troisième criée, l'adjudication est faite au plus offrant et dernier enchérisseur, à l'extinction des feux, sans autre formalité.

Le juge commis d'office peut accorder une ou deux remises, de huitaine chacune.

Elles sont publiées et affichées.

Art. 207. Si la saisie porte sur des barques, chaloupes et autres bâtiments du port de dix tonneaux et au-dessous, l'adjudication sera faite à l'audience, après la publication, sur le quai, pendant trois jours consécutifs, avec affiche au mât, ou, à défaut, en autre lieu apparent du bâtiment, et à la porte du tribunal.

Il sera observé un délai de huit jours francs entre la signification de la saisie et la vente.



In the public square of the place, and on the wharf where the vessel lies, and also at the exchange.

Art. 204. The proclamations, notices, and publications, must designate,

The name, profession, and residence of the attaching creditor.

The titles in virtue of which he prosecutes.

The amount of the sum due to him.

The domicile chosen by him for the sale, in the place where the tribunal is held, and where the vessel lies.

The name and domicile of the owner of the vessel seized.

The name of the vessel, and that of the captain, and whether she is fitting out, or ready for sea.

The tonnage of the vessel.

The place where lying, or moored.

The name of the plaintiff's attorney.

The price at which the vessel is set up.

The days of public sale.(35)

Art. 205. After the first proclamation, the bids for the vessel shall be received on the day indicated by the advertisement.

The judge, being *ex officio* the auctioneer, continues to receive the bids, after each proclamation, from week to week, until a certain day fixed for the sale by his ordinance.

Art. 206. After the third proclamation, the vessel is struck off to the highest and last bidder, at the extinction of the lights, without any other formality.(36)

The judge *ex officio* acting as auctioneer, may postpone the sale once or twice, for a week each time.

These postponements are published and posted up.

Art. 207. If barks, sloops, and other small vessels, of the burden of ten tons or under, be seized, the sale shall be definitively made in the audience chamber of the court, after the publication on the quay, for three days in succession, with posting up on the mast, or where there is no mast, on some visible part of the vessel, and on the door of the tribunal.

Eight days complete shall elapse between the seizure and sale.

**Art. 208.** L'adjudication du navire fait cesser les fonctions du capitaine ; sauf à lui à se pourvoir en dédommagement contre qui de droit.

**Art. 209.** Les adjudicataires des navires de tout tonnage, seront tenus de payer le prix de leur adjudication dans le délai de vingt-quatre heures, ou de le consigner, sans frais, au greffe du tribunal de commerce, à peine d'y être contraints par corps.

A défaut de paiement ou de consignation, le bâtiment sera remis en vente, et adjugé trois jours après une nouvelle publication et affiche unique, à la folle enchère des adjudicataires, qui seront également contraints par corps pour le paiement du déficit, des dommages, des intérêts et des frais.

**Art. 210.** Les demandes en distraction seront formées et notifiées au greffe du tribunal avant l'adjudication.

Si les demandes en distraction ne sont formées qu'après l'adjudication, elles seront converties, de plein droit, en oppositions à la délivrance des sommes provenant de la vente.

**Art. 211.** Le demandeur ou l'opposant aura trois jours pour fournir ses moyens.

Le défendeur aura trois jours pour contredire.

La cause sera portée à l'audience sur une simple citation.

**Art. 212.** Pendant trois jours après celui de l'adjudication, les oppositions à la délivrance du prix seront reçues ; passé ce temps, elles ne seront plus admises.

**Art. 213.** Les créanciers opposants sont tenus de produire au greffe leurs titres de créance, dans les trois jours qui suivent la sommation qui leur en est faite par le créancier poursuivant ou par le tiers saisi ; faute de quoi il sera procédé à la distribution du prix de la vente, sans qu'ils y soient compris.

**Art. 214.** La collocation des créanciers et la distribution de deniers sont faites entre les créanciers privilégiés, dans l'ordre

**Art. 208.** The judicial sale of the vessel terminates the functions of the captain, saving to him his right of action for damages against whomsoever he may have legal cause.

**Art. 209.** The purchaser of a vessel of whatever tonnage, at a public sale judicially ordered, shall be bound to pay the price at which it was struck off, within twenty-four hours, or to deposit the same, free of expense, in the clerk's office of the tribunal of commerce, under the penalty of personal imprisonment.

In default of payment, or deposit in the clerk's office, the vessel shall be again set up to sale, and definitively sold, three days after a new publication and a single posting up, at the risk of the former purchaser, who shall be equally constrained, by personal imprisonment, to pay the deficiency, if any, in the price, the damages, and all expenses.

**Art. 210.** All demands of a division of the property seized, must be made and notified at the clerk's office of the tribunal of commerce, before the conclusion of the sale.(37)

If the demands of division be not made until after the sale, they shall be legally considered as oppositions to the payment of the price of the object sold.

**Art. 211.** The demandant, or the party opposing, shall have three days to produce his titles.

The defendant shall have three days to answer.

The cause shall be carried before the court on a simple citation.

**Art. 212.** Oppositions to the payment of the price of the object sold, shall be received for three days succeeding the sale, after which time no more shall be admitted.

**Art. 213.** The opposing creditors are required to produce, in the clerk's office, proofs of their claims, within three days after the summons given to them by the attaching creditor, or the defendant in the attachment; in default of which, a distribution of the money arising from the sale shall be made, without their participation.

**Art. 214.** The privileged creditors are classed, and the distribution made among them according to the order prescribed by

prescrit par l'art. 191. du Tit. I.; et entre les autres créanciers, au marc le franc de leurs créances.

Tout créancier colloqué l'est tant pour son principal que pour les intérêts et frais.

Art. 215. Le bâtiment prêt à faire voile n'est pas saisissable, si ce n'est à raison de dettes contractées pour le voyage qu'il va faire; et même, dans ce dernier cas, le cautionnement de ces dettes empêche la saisie.

Le bâtiment est censé prêt à faire voile lorsque le capitaine est muni de ses expéditions pour son voyage.

### TITRE III.

#### *Des Propriétaires de Navires.*

Art. 216. Tout propriétaire de navire est civilement responsable des faits du capitaine, pour ce qui est relatif au navire et à l'expédition.

La responsabilité cesse par l'abandon du navire et du fret.

Art. 217. Les propriétaires des navires équipés en guerre, ne seront toutefois responsables des délits et déprédations commis en mer par les gens de guerre qui sont sur leurs navires, ou par les équipages, que jusqu'à concurrence de la somme pour laquelle ils auront donné caution, à moins qu'ils n'en soient participants ou complices.

Art. 218. Le propriétaire peut congédier le capitaine.

Il n'y a pas lieu à indemnité, s'il n'y a convention par écrit.

Art. 219. Si le capitaine congédié est copropriétaire du navire, il peut renoncer à la copropriété et exiger le remboursement du capital qui la représente.

Le montant de ce capital est déterminé par des experts convenus ou nommés d'office.

article 191. of Title I. The other creditors receive their quota in proportion to the amount of their respective demands.

Every creditor classed as above mentioned, is admitted for the amount of his principal, interest, and costs.

Art. 215. A vessel ready to sail is not liable to seizure, unless on account of debts contracted for the voyage on which she is bound; and even in this latter case, the seizure may be prevented on giving security.

A vessel is understood to be ready to sail, when the master has received his clearance and other papers at the custom-house.

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### TITLE III.

#### *Of the Owners of Vessels.*

Art. 216. Every owner of a vessel is civilly responsible for the acts of the master, in whatever relates to the vessel and the voyage.

This responsibility ceases on the abandonment of the vessel and the freight.

Art. 217. The owners of armed vessels, in time of war, shall not, however, be responsible for the misdemeanors and depredations committed at sea, by the soldiers on board their vessels, or by the crew, beyond the amount of the security which they shall have given, unless they should be participant in the acts committed, or accomplices.

Art. 218. The owner may dismiss the master.

There can be no claim to indemnity, if there be no contract in writing.

Art. 219. If the master dismissed be part owner of the vessel, he may renounce his part ownership, and demand a reimbursement of the value of it.

The amount of this value is determined by appraisers agreed upon, or officially appointed.

Art. 220. En tout ce qui concerne l'intérêt commun des propriétaires d'un navire, l'avis de la majorité est suivi.

La majorité se détermine par une portion d'intérêt dans le navire, excédant la moitié de sa valeur.

La licitation du navire ne peut être accordée que sur la demande des propriétaires, formant ensemble la moitié de l'intérêt total dans le navire, s'il n'y a, par écrit, convention contraire.

#### TITRE IV.

##### *Du Capitaine.*

Art. 221. Tout capitaine, maître ou patron, chargé de la conduite d'un navire ou autre bâtiment, est garant de ses fautes, même légères, dans l'exercice de ses fonctions.

Art. 222. Il est responsable des marchandises dont il se charge.

Il en fournit une reconnaissance.

Cette reconnaissance se nomme *connaissement*.

Art. 223. Il appartient au capitaine de former l'équipage du vaisseau, et de choisir et louer les matelots et autres gens de l'équipage; ce qu'il fera néanmoins de concert avec les propriétaires, lorsqu'il sera dans le lieu de leur demeure.

Art. 224. Le capitaine tient un registre coté et paraphé par l'un des juges du tribunal de commerce, ou par le maire ou son adjoint, dans les lieux où il n'y a pas de tribunal de commerce.

Ce registre contient,

Les résolutions prises pendant le voyage.

La recette et la dépense concernant le navire, et généralement tout ce qui concerne le fait de sa charge, et tout ce qui peut donner lieu à un compte à rendre, à une demande à former.

**Art. 220.** In every thing which concerns the joint interest of the owners of a vessel, the opinion of the majority is followed.

The majority is determined by a portion of interest in the vessel exceeding one half of her value.

The severance of property in a vessel, by a public sale of the whole, cannot be effected, but on the request of the owners, forming together a moiety of the whole interest in the vessel, unless there be a contrary agreement in writing.

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## **TITLE IV.**

### *Of the Captain.*

**Art. 221.** Every captain, master, or commander, charged with the care and management of a ship, or other vessel, is responsible for faults, even though slight, in the exercise of his functions.

**Art. 222.** He is answerable for the merchandise laden on board his vessel.

He gives a receipt for it.

This receipt is called a *bill of lading*.

**Art. 223.** It is the master's duty to form the crew of the vessel, and to choose and hire the sailors and other persons employed on board; which, however, he shall do in concert with the owners, whenever he is in the place of their residence.

**Art. 224.** The master keeps a register, marked and certified by one of the judges of the tribunal of commerce, or by the mayor or his assistant, in places where there is no tribunal of commerce.

This register contains,

The transactions during the voyage.

The receipts and expenses concerning the vessel, and generally, every thing which relates to the duties of his office, and every thing which may be the subject of an account to be rendered, or a demand to be made.

**Art. 225.** Le capitaine est tenu, avant de prendre charge, de faire visiter son navire, aux termes et dans les formes prescrits par les règlements.

Le procès-verbal de visite est déposé au greffe du tribunal de commerce; il en est délivré extrait au capitaine.

**Art. 226.** Le capitaine est tenu d'avoir à bord,  
L'acte de propriété du navire.  
L'acte de francisation.  
Le rôle d'équipage.  
Les connaissements et chartes-parties.  
Les procès-verbaux de visite.  
Les acquits de paiement ou à caution des douanes.

**Art. 227.** Le capitaine est tenu d'être en personne dans son navire, à l'entrée et à la sortie des ports, havres ou rivières.

**Art. 228.** En cas de contravention aux obligations imposées par les quatre articles précédents, le capitaine est responsable de tous les événements envers les intéressés au navire et chargement.

**Art. 229.** Le capitaine répond également de tout le dommage qui peut arriver aux marchandises qu'il aurait chargées sur le tillac de son vaisseau sans le consentement par écrit du chargeur.

Cette disposition n'est point applicable au petit cabotage.

**Art. 230.** La responsabilité du capitaine ne cesse que par la preuve d'obstacles de force majeure.

**Art. 231.** Le capitaine et les gens de l'équipage qui sont à bord, ou qui sur les chaloupes se rendent à bord pour faire voile, ne peuvent être arrêtés pour dettes civiles, si ce n'est à raison de celles qu'ils auront contractées pour le voyage, et même, dans ce dernier cas, ils ne peuvent être arrêtés s'ils donnent caution.

**Art. 232.** Le capitaine, dans le lieu de la demeure des propriétaires ou de leurs fondés de pouvoirs, ne peut, sans leur autorisation spéciale, faire travailler au radoub du bâtiment, acheter des



**Art. 225.** The master is required, before he takes charge of his vessel, to have her surveyed, according to the terms and forms prescribed by the regulations.

The report of this survey is deposited in the clerk's office of the tribunal of commerce, and an abstract of the same delivered to the master.

**Art. 226.** The master is required to have on board,

The certificate of ownership of the vessel.

The public register.

The shipping articles, or muster-roll.

The bills of lading and charter-parties.

The report of the survey.

The acquittances for payment of duties, or security for the same to the custom-houses.

**Art. 227.** The master is required to be personally on board his vessel, on the entering or coming out of ports, harbours, or rivers.

**Art. 228.** In case of infraction of the obligations imposed by the four preceding articles, the master is responsible for all accidents which may happen, to the prejudice of persons interested in the vessel or cargo.

**Art. 229.** The master is equally answerable for all damage which may happen to any merchandise, which he shall have put on the deck of his vessel, without the consent in writing of the shipper.

This provision is not applicable to the small coasting trade.

**Art. 230.** The master is exempt from responsibility only on proof of irresistible force.

**Art. 231.** The master and the crew who are on board, or who are in boats going on board to make sail, cannot be arrested in any civil action, unless for a debt contracted for the voyage on which they are bound, and not even in this latter case, if they give security.

**Art. 232.** The master, in the place of residence of the owners, or their agents, cannot, without their special authority, have the vessel repaired, buy sails, cordage, or other things, for her use

voiles, cordages, et autres choses pour le bâtiment, prendre à cet effet de l'argent sur le corps du navire, ni fréter le navire.

Art. 233. Si le bâtiment était frété du consentement des propriétaires, et que quelques uns d'eux fissent refus de contribuer aux frais nécessaires pour l'expédier, le capitaine pourra, en ce cas, vingt-quatre heures après sommation faite aux refusants de fournir leur contingent, emprunter à la grosse pour leur compte sur leur portion d'intérêt dans le navire, avec autorisation du juge.

Art. 234. Si, pendant le cours du voyage, il y a nécessité de radoub, ou d'achat de victuailles, le capitaine, après l'avoir constaté par un procès-verbal signé des principaux de l'équipage, pourra, en se faisant autoriser en France par le tribunal de commerce, ou, à défaut, par le juge de paix, chez l'étranger par le consul français, ou, à défaut, par le magistrat des lieux, emprunter sur le corps et quille du vaisseau, mettre en gage ou vendre des marchandises jusqu'à concurrence de la somme que les besoins constatés exigent.

Les propriétaires, ou le capitaine qui les représente, tiendront compte des marchandises vendues, d'après le cours des marchandises de même nature et qualité, dans le lieu de la décharge du navire, à l'époque de son arrivée.

Art. 235. Le capitaine, avant son départ d'un port étranger ou des colonies françaises, pour revenir en France, sera tenu d'envoyer à ses propriétaires ou à leurs fondés de pouvoirs, un compte signé de lui, contenant l'état de son chargement, le prix des marchandises de sa cargaison, les sommes par lui empruntées, les noms et demeures des prêteurs.

Art. 236. Le capitaine qui aura sans nécessité pris de l'argent sur le corps, avictuaillement ou équipement du navire, engagé ou vendu des marchandises ou des victuailles, ou qui aura employé dans ses comptes des avaries et des dépenses supposées, sera responsable envers l'armement, et personnellement tenu du remboursement de l'argent ou du paiement des objets, sans préjudice de la poursuite criminelle, s'il y a lieu.

nor take up, for that purpose, money on bottomry, nor let the vessel to freight.

**Art. 233.** If the vessel should be let to freight by the consent of the owners, and some of them refuse to contribute to the necessary expenses of outfit, the master, in this case, with the authorization of the judge, twenty-four hours after summoning the owners so refusing to furnish their contingent, may borrow the amount of the same for their account, on bottomry, on their portion of interest in the vessel.

**Art. 234.** If, during the course of the voyage, it becomes necessary to repair the vessel, or to buy provisions, the master, after having verified the same, by a report drawn up and signed by the principal officers of the crew, may, on obtaining the authorization in France of the tribunal of commerce, or, where there is no tribunal, of the justice of peace, and in a foreign country, of the French consul, or, where there is no consul, of the magistrate of the place, borrow on bottomry, pledge or sell the merchandise laden on board, to the amount of the sum which the necessities of the vessel require.

The owners, or the master, who represents them, shall account for the merchandise sold, at the current price of goods of the same nature and quality, in the place of the discharge of the vessel, at the period of her arrival.

**Art. 235.** The master, before his departure from a foreign port, or from one in the French colonies, is required to send to his owners, or to their agents, an account, signed by him, containing the particulars of his cargo, the value of the merchandise on board, the sums borrowed by him, the names and places of residence of the lenders.

**Art. 236.** The master who shall, without necessity, have taken up money on bottomry, on the body, provisions, or equipment of his vessel, pledged or sold any part of the cargo or the provisions, or who shall have given a false account of damages sustained, or expenses incurred, shall be responsible towards the owners and shippers, and personally bound to reimburse the money borrowed, or the value of the articles sold; without prejudice to a criminal prosecution against him, if there be cause.

**Art. 237.** Hors le cas d'innavigabilité légalement constatée, le capitaine ne peut, à peine de nullité de la vente, vendre le navire sans un pouvoir spécial des propriétaires.

**Art. 238.** Tout capitaine de navire engagé pour un voyage est tenu de l'achever, à peine de tous dépens, dommages-intérêts envers les propriétaires et les affrêteurs.

**Art. 239.** Le capitaine qui navigue à profit commun sur le chargement, ne peut faire aucun trafic ni commerce pour son compte particulier, s'il n'y a convention contraire.

**Art. 240.** En cas de contravention aux dispositions mentionnées dans l'article précédent, les marchandises embarquées par le capitaine pour son compte particulier sont confisquées au profit des autres intéressés.

**Art. 241.** Le capitaine ne peut abandonner son navire pendant le voyage, pour quelque danger que ce soit, sans l'avis des officiers et principaux de l'équipage; et, en ce cas, il est tenu de sauver avec lui l'argent et ce qu'il pourra des marchandises les plus précieuses de son chargement, sous peine d'en répondre en son propre nom.

Si les objets ainsi tirés du navire sont perdus par quelque cas fortuit, le capitaine en demeurera déchargé.

**Art. 242.** Le capitaine est tenu, dans les vingt-quatre heures de son arrivée, de faire viser son registre, et de faire son rapport.

Le rapport doit énoncer,

Le lieu et le temps de son départ.

La route qu'il a tenue.

Les hasards qu'il a courus.

Les désordres arrivés dans le navire, et toutes les circonstances remarquables de son voyage.

**Art. 243.** Le rapport est fait au greffe devant le président du tribunal de commerce.

**Art. 237.** Except in cases where the vessel is legally proved not to be seaworthy, the master cannot sell her without a special power for that purpose from the owners, under the penalty of the sale being declared void.

**Art. 238.** Every master of a vessel engaged for a voyage is bound to perform it, under the penalty of being answerable for all losses, damages, and expenses towards the owners and freighters.

**Art. 239.** The master, who takes charge of a vessel for a joint profit on the voyage, cannot carry on any traffic, or commerce, on his separate account, unless there be an agreement to the contrary.

**Art. 240.** In case of infraction of the provision contained in the preceding article, the merchandise taken on board by the captain for his private account, shall be forfeited to the other parties interested in the vessel.

**Art. 241.** The master cannot abandon his vessel during the voyage, whatever may be the danger with which he is threatened, without the advice of the officers and principal mariners; and in that case, he is required to carry away with him the money, and such part as he can of the most valuable of the goods on board, under the penalty of being personally answerable for the same.

If the articles thus taken from the vessel be lost, by accident, the master shall be discharged from any liability on account of them.

**Art. 242.** The master is required, within twenty-four hours after his arrival, to have his journal certified, and to make his report.

The report must mention,

The place and the time of his departure.

The course he has kept.

The dangers he has run.

The accidents which have happened to the vessel and crew, and all the remarkable circumstances of his voyage.

**Art. 243.** The report is made at the clerk's office, before the president of the tribunal of commerce.

Dans les lieux où il n'y a pas de tribunal de commerce, le rapport est fait au juge de paix de l'arrondissement.

Le juge de paix qui a reçu le rapport, est tenu de l'envoyer sans délai au président du tribunal de commerce le plus voisin.

Dans l'un et l'autre cas, le dépôt en est fait au greffe du tribunal de commerce.

Art. 244. Si le capitaine aborde dans un port étranger, il est tenu de se présenter au consul de France, de lui faire un rapport, et de prendre un certificat constatant l'époque de son arrivée et de son départ, l'état et la nature de son chargement.

Art. 245. Si, pendant le cours du voyage, le capitaine est obligé de relâcher dans un port français, il est tenu de déclarer au président du tribunal de commerce du lieu, les causes de sa relâche.

Dans les lieux où il n'y a pas de tribunal de commerce, la déclaration est faite au juge de paix du canton.

Si la relâche forcée a lieu dans un port étranger, la déclaration est faite au consul de France, ou, à son défaut, au magistrat du lieu.

Art. 246. Le capitaine qui a fait naufrage, et qui s'est sauvé seul ou avec partie de son équipage, est tenu de se présenter devant le juge du lieu, ou, à défaut de juge, devant toute autre autorité civile, d'y faire son rapport, de le faire vérifier par ceux de son équipage qui se seraient sauvés et se trouveraient avec lui, et d'en lever expédition.

Art. 247. Pour vérifier le rapport du capitaine, le juge reçoit l'interrogatoire des gens de l'équipage, et, s'il est possible, des passagers, sans préjudice des autres preuves.

Les rapports non vérifiés ne sont point admis à la décharge du capitaine, et ne font point foi en justice, excepté dans le cas où le capitaine naufragé s'est sauvé seul dans le lieu où il a fait son rapport.

La preuve des faits contraires est réservée aux parties.

Art. 248. Hors les cas de péril imminent, le capitaine ne peut

In places where there is no tribunal of commerce, the report is made to the justice of peace of the district.

The justice of peace who has received the report, is required to send it without delay to the president of the nearest tribunal of commerce.

In either case it is deposited in the clerk's office of the tribunal of commerce.

Art. 244. If the master touch in a foreign port, he is required to present himself before the French consul, to make a report to him, and to take a certificate attesting the period of his arrival and departure, the condition and nature of his cargo.

Art. 245. If, during the course of the voyage, the master be obliged to put into a French port, he is required to declare to the president of the tribunal of commerce of the place, the causes of his stopping.

In places where there is no tribunal of commerce, the declaration is made to the justice of peace of the district.

If forced by stress of weather, or otherwise, to put into a foreign port, the declaration is made to the French consul, or, if none there, to the magistrate of the place.

Art. 246. The master who has been shipwrecked, and who alone has escaped, or with part of his crew, is required to go before the judge of the place, or, where there is no judge, before any other civil authority, and make his report, to have it verified by those of the crew who may have escaped with him, and to take a certified copy of the same.

Art. 247. In order to verify the report of the master, the judge interrogates the crew, and, if possible, the passengers, without rejecting other proofs.

Reports which are not verified, are not admitted in discharge of the master, and they cannot be produced in a court of justice, except in the case where the master shipwrecked, has escaped alone in the place where he has made his report.

Proof of contrary facts is allowed to the parties.

Art. 248. Except in cases of imminent peril, the master can-

décharger aucune marchandise avant d'avoir fait son rapport, à peine de poursuites extraordinaires contre lui.

Art. 249. Si les victuailles du bâtiment manquent pendant le voyage, le capitaine, en prenant l'avis des principaux de l'équipage, pourra contraindre ceux qui auront des vivres en particulier de les mettre en commun, à la charge de leur en payer la valeur.

## TITRE V.

### *De l'Engagement et des Loyers des Matelots et Gens de l'équipage.*

Art. 250. Les conditions d'engagement du capitaine et des hommes d'équipage d'un navire, sont constatées par le rôle d'équipage, ou par les conventions des parties.

Art. 251. Le capitaine et les gens de l'équipage ne peuvent, sous aucun prétexte, charger dans le navire aucune marchandise pour leur compte, sans la permission des propriétaires, et sans en payer le fret, s'ils n'y sont autorisés par l'engagement.

Art. 252. Si le voyage est rompu par le fait des propriétaires, capitaine ou affréteurs, avant le départ du navire, les matelots loués au voyage ou au mois sont payés des journées par eux employés à l'équipement du navire. Ils retiennent pour indemnité les avances reçues.

Si les avances ne sont pas encore payées, ils reçoivent pour indemnité un mois de leurs gages convenus.

Si la rupture arrive après le voyage commencé, les matelots loués au voyage sont payés en entier aux termes de leur convention.

Les matelots loués au mois reçoivent leurs loyers stipulés pour le temps qu'ils ont servi, et en outre, pour indemnité, la moitié de leurs gages pour le reste de la durée présumée du voyage, pour lequel ils étaient engagés.



not discharge any part of the cargo before he has made his report, under the penalty of being prosecuted criminally.

**Art. 249.** If the provisions of the vessel fail, during the voyage, the master, on taking the advice of the principal persons of the crew, may compel those who have a private stock of provisions to put them in common, on condition of being paid the value.

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## **TITLE V.**

### *Of the Engagement and wages of Seamen.*

**Art. 250.** The conditions of the engagement of the master and crew of a vessel, are proved by the shipping articles, or by agreements between the parties.

**Art. 251.** The master and crew cannot, under any pretence, lade on board the vessel any articles of merchandise for their own account, without the permission of the owners, and without paying the freight, unless they be authorized by the terms of their engagement.

**Art. 252.** If the voyage be broken up by the act of the owners, captain or freighters, before the departure of the vessel, the seamen hired by the voyage, or by the month, are paid for the days they have been employed in the equipment of the vessel. They also retain as an indemnity the advances they have received.

If the advances be not yet paid, they receive for their indemnity one month's pay of the wages agreed upon.

If the rupture of the voyage take place after its commencement, the seamen hired by the voyage are paid in full, according to the terms of the agreement.

Seamen hired by the month, receive their stipulated wages for the time they have served, and in addition, as an indemnity, one half of their wages for the presumed duration of the remainder of the voyage, for which they were engaged.

Les matelots loués au voyage ou au mois, reçoivent en outre leur conduite de retour jusqu'au lieu du départ du navire, à moins que le capitaine, les propriétaires ou affrétteurs, ou l'officier d'administration, ne leur procurent leur embarquement sur un autre navire revenant audit lieu de leur départ.

Art. 253. S'il y a interdiction de commerce avec le lieu de la destination du navire, ou si le navire est arrêté par ordre du gouvernement avant le voyage commencé,

Il n'est dû aux matelots que les journées employées à équiper le bâtiment.

Art. 254. Si l'interdiction de commerce ou l'arrêt du navire arrivent pendant le cours du voyage,

Dans le cas d'interdiction, les matelots sont payés à proportion du temps qu'ils auront servi.

Dans le cas de l'arrêt, le loyer des matelots, engagés au mois, court pour moitié pendant le temps de l'arrêt.

Le loyer des matelots engagés au voyage est payé, aux termes de leur engagement.

Art. 255. Si le voyage est prolongé, le prix des loyers des matelots engagés au voyage, est augmenté à proportion de la prolongation.

Art. 256. Si la décharge du navire se fait volontairement dans un lieu plus rapproché que celui qui est désigné par l'affrètement, il ne leur est fait aucune diminution.

Art. 257. Si les matelots sont engagés au profit ou au fret, il ne leur est dû aucun dédommagement ni journée pour la rupture, le retardement ou la prolongation de voyage occasionnés par force majeure.

Si la rupture, le retardement ou la prolongation arrivent par le fait des chargeurs, les gens de l'équipage ont part aux indemnités qui sont adjugées au navire.

Ces indemnités sont partagées entre les propriétaires du navire et les gens de l'équipage dans la même proportion que l'aurait été le fret.

Seamen hired by the voyage or month receive, besides their pay, their expenses back as far as the port whence the vessel took her departure, unless the master, the owners, freighters, or the officer of government, procure their passage in another vessel returning to the place of their departure.

Art. 253. If there be an interdiction of commerce with the place of the vessel's destination, or if the vessel be stopped by order of the government before the commencement of the voyage,

The seamen can only claim wages for the time they were employed in fitting out the vessel.

Art. 254. If the interdiction of commerce or arrest of the vessel, happen during the course of the voyage,

In case of interdiction, the seamen are paid in proportion to the time they have served.

In case of arrest, the wages of the seamen, engaged by the month, continue at the rate of one half the stipulated monthly price, during the detention.

The wages of the seamen engaged by the voyage are paid according to the terms of their engagement.

Art. 255. If the voyage be prolonged, the wages of the seamen engaged by the voyage, are increased in proportion to its prolongation.

Art. 256. If the discharge of the vessel be voluntarily made at a nearer place than that of her original destination, no deduction is to be made from their wages.

Art. 257. If the seamen be engaged for a share in the profit or freight of the voyage, no indemnity shall be due to them, nor daily wages in consequence of its rupture, delay or prolongation occasioned by irresistible force.

If the rupture, delay, or prolongation, happen by the act of the shippers, the crew shall have a share in the indemnities which may be adjudged to the vessel.

These indemnities are divided between the owner of the vessel and the crew, in the same proportion as the freight would have been.

Si l'empêchement arrive par le fait du capitaine ou des propriétaires, ils sont tenus des indemnités dues aux gens de l'équipage.

Art. 258. En cas de prise, de bris et naufrage, avec perte entière du navire et des marchandises, les matelots ne peuvent prétendre aucun loyer.

Ils ne sont point tenus de restituer ce qui leur a été avancé sur leurs loyers.

Art. 259. Si quelque partie du navire est sauvée, les matelots engagés au voyage ou au mois sont payés de leurs loyers échus sur les débris du navire qu'ils ont sauvés.

Si les débris ne suffisent pas, ou s'il n'y a que des marchandises sauvées, ils sont payés de leurs loyers subsidiairement sur le fret.

Art. 260. Les matelots engagés au fret sont payés de leurs loyers seulement sur le fret, à proportion de celui que reçoit le capitaine.

Art. 261. De quelque manière que les matelots soient loués, ils sont payés des journées par eux employées à sauver les débris et les effets naufragés.

Art. 262. Le matelot est payé de ses loyers, traité et pansé aux dépens du navire, s'il tombe malade pendant le voyage ou s'il est blessé au service du navire.

Art. 263. Le matelot est traité et pansé aux dépens du navire et du chargement, s'il est blessé en combattant contre les ennemis et les pirates.

Art. 264. Si le matelot, sorti du navire sans autorisation, est blessé à terre, les frais de ses pansement et traitement sont à sa charge : il pourra même être congédié par le capitaine.

Ses loyers, en ce cas, ne lui seront payés qu'à proportion du temps qu'il aura servi.

Art. 265. En cas de mort d'un matelot pendant le voyage, si le matelot est engagé au mois, ses loyers sont dus à sa succession jusqu'au jour de son décès.

Si le matelot est engagé au voyage, la moitié de ses loyers est due s'il meurt en allant, ou au port d'arrivée.

If the impediment happen by the act of the master or the owners, they shall be liable for indemnities due to the crew.

Art. 258. In case of capture, stranding, or shipwreck, with a total loss of the vessel and cargo, the seamen are not entitled to any wages.

They are not obliged to refund the advances received on their wages.

Art. 259. If some part of the vessel be saved, the seamen engaged by the voyage or by the month, are to be paid their wages already due out of the wreck thus saved.

If the wreck be not sufficient, or if there be only goods saved, they shall be paid their wages subsidiarily out of the freight.

Art. 260. The seamen engaged on a share of the freight, are to be paid their wages solely out of the freight, in proportion to what the master receives.

Art. 261. In whatever manner the seamen may be hired, they are to be paid their days' work while employed in saving the wreck and the effects on board.

Art. 262. Seamen are to be paid their wages, and receive medical treatment at the expense of the ship, if they fall sick during the voyage, or be wounded in the service of the vessel.

Art. 263. The seamen are to receive medical treatment at the expense of the ship and cargo, if they be wounded in defending the ship against enemies or pirates.

Art. 264. If a seaman leave the ship without permission, and be wounded on shore, the expense of medical treatment shall be at his own charge: he may even be dismissed by the captain.

His wages, in this case, shall be paid him only in proportion to the time he shall have served.

Art. 265. In case of the death of a seaman during the voyage, if engaged by the month, his wages shall be due to his heirs or assigns up to the day of his decease.

If seamen be engaged by the voyage, one half of their wages shall be due, if they die on the voyage out, or at the port of destination.

Le total de ses loyers est dû s'il meurt en revenant.

Si le matelot est engagé au profit ou au fret, sa part entière est due s'il meurt le voyage commencé.

Les loyers du matelot tué en défendant le navire, sont dus en entier pour tout le voyage, si le navire arrive à bon port.

Art. 266. Le matelot pris dans le navire et fait esclave ne peut rien prétendre contre le capitaine, les propriétaires ni les affrèteurs, pour le paiement de son rachat.

Il est payé de ses loyers jusqu'au jour où il est pris et fait esclave.

Art. 267. Le matelot pris et fait esclave s'il a été envoyé en mer ou à terre pour le service du navire, a droit à l'entier paiement de ses loyers.

Il a droit au paiement d'une indemnité pour son rachat, si le navire arrive à bon port.

Art. 268. L'indemnité est due par les propriétaires du navire, si le matelot a été envoyé en mer ou à terre pour le service du navire.

L'indemnité est due par les propriétaires du navire et du chargement, si le matelot a été envoyé en mer ou à terre pour le service du navire et du chargement.

Art. 269. Le montant de l'indemnité est fixé à 600 fr.

Le recouvrement et l'emploi en seront faits suivant les formes déterminées par le gouvernement, dans un règlement relatif au rachat des captifs.

Art. 270. Tout matelot qui justifie qu'il est congédié sans cause valable, a droit à une indemnité contre le capitaine.

L'indemnité est fixée au tiers des loyers, si le congé a lieu avant le voyage commencé.

L'indemnité est fixée à la totalité des loyers et aux frais du retour, si le congé a lieu pendant le cours du voyage.

The whole of their wages shall be due, if they die on the voyage home.

If seamen be engaged on the profit or freight of the vessel, their whole part shall be due, if they die after the commencement of the voyage.

The wages of the seamen killed in defending the ship, shall be entirely due for the whole voyage, if the ship arrive safe.

Art. 266. Seamen who are taken on board of the ship, and made slaves, can have no claim on the master, owners, or freighters, for the payment of their ransom.

They shall be paid their wages up to the day of their captivity.

Art. 267. If a seaman be taken and made slave, in consequence of being sent out at sea, or on shore, on the service of the ship, he shall have a right to the full payment of his wages.

He shall be entitled to an indemnity for his ransom, if the ship arrive safe.

Art. 268. The indemnity is due by the owners of the vessel, if the seaman has been sent out at sea, or on shore, on the service of the vessel.

The indemnity is due by the owners of the vessel and of the cargo, if the seaman has been sent out at sea, or on shore, in the service of the vessel and cargo.

Art. 269. The amount of the indemnity is fixed at 600 francs, (about 120 dollars.)

The collection and application of which shall be made according to the mode determined by the government, in a regulation relative to the ransom of captives.

Art. 270. Every seaman who produces satisfactory proof of having been discharged without a valid cause, has a right to indemnity from the master.

The indemnity is fixed at one third of the seaman's wages, if the discharge took place before the commencement of the voyage.

The indemnity is fixed at the whole amount of his wages and his expenses of return, if the discharge took place during the course of the voyage.

Le capitaine ne peut, dans aucun des cas ci-dessus, répéter le montant de l'indemnité contre les propriétaires du navire.

Il n'y a pas lieu à indemnité, si le matelot est congédié avant la clôture du rôle d'équipage.

Dans aucun cas, le capitaine ne peut congédier un matelot dans les pays étrangers.

Art. 271. Le navire et le fret sont spécialement affectés aux loyers des matelots.

Art. 272. Toutes les dispositions concernant les loyers, passages et rachat des matelots, sont communes aux officiers et à tous autres gens de l'équipage.

## TITRE VI.

### *Des Chartes-parties, Affrètements, ou Nolisements.*

Art. 273. Toute convention pour louage d'un vaisseau, appelée *charte-partie*, *affrètement*, ou *nolisements*, doit être rédigée par écrit.

Elle énonce,

Le nom et le tonnage du navire.

Le nom du capitaine.

Les noms du frèteur et de l'affréteur.

Le lieu et le temps convenus pour la charge et pour la décharge.

Le prix du fret ou nolis.

Si l'affrètement est total ou partiel.

L'indemnité convenue pour les cas de retard.

Art. 274. Si le temps de la charge et de la décharge du navire n'est point fixé par les conventions des parties, il est réglé suivant l'usage des lieux.

Art. 275. Si le navire est frété au mois, et s'il n'y a convention contraire, le fret court du jour où le navire a fait voile.



The master cannot, in neither of the above cases, demand the amount of the indemnity from the owners of the vessel.

There is no right to indemnity, if the seaman be discharged before the completion of the shipping articles.

In no case can the master discharge a seaman in a foreign country.

Art. 271. The ship and the freight are specially bound for the seamen's wages.

Art. 272. All the provisions of the law concerning the wages, medical treatment, and ransom of seamen, are equally applicable to the officers and other persons of the crew.

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## TITLE VI.

### *Of Charter-Parties and Affreightment.*

Art. 273. Every agreement for hiring a vessel called a *charter-party*, or *affreightment*, must be in writing.

It specifies,

The name and the tonnage of the vessel.

The name of the captain.

The names of the letter to freight and the freighter, that is, the owner and the merchant.

The place and the time agreed upon for the lading and the discharge.

The price of the freight.

Whether the affreightment be total, or partial, that is, for the whole, or a part of the vessel.

The demurrage, or indemnity, agreed upon in cases of delay.

Art. 274. If the time of lading and discharge of the vessel be not fixed, by the agreement between the parties, it shall be regulated by the usage of the places of lading and discharge.

Art. 275. If the vessel be freighted by the month, and if there be no agreement to the contrary, the freight runs from the day of the sailing of the vessel.

Art. 276. Si, avant le départ du navire, il y a interdiction de commerce avec le pays pour lequel il est destiné, les conventions sont résolues sans dommages-intérêts de part ni d'autre.

Le chargeur est tenu des frais de la charge et de la décharge de ses marchandises.

Art. 277. S'il existe une force majeure qui n'empêche que pour un temps la sortie du navire, les conventions subsistent, et il n'y a pas lieu à dommages-intérêts à raison du retard.

Elles subsistent également, et il n'y a lieu à aucune augmentation de fret, si la force majeure arrive pendant le voyage.

Art. 278. Le chargeur peut, pendant l'arrêt du navire, faire décharger ses marchandises à ses frais, à condition de les recharger ou d'indemniser le capitaine.

Art. 279. Dans le cas de blocus du port pour lequel le navire est destiné, le capitaine est tenu, s'il n'a des ordres contraires, de se rendre dans un des ports voisins de la même puissance où il lui sera permis d'aborder.

Art. 280. Le navire, les agrès ou appareils, le fret et les marchandises chargées, sont respectivement affectés à l'exécution des conventions des parties.

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## TITRE VII.

### *Du Connaissance.*

Art. 281. Le connaissance doit exprimer la nature et la quantité ainsi que les espèces ou qualités des objets à transporter.

Il indique,

Le nom du chargeur.

Le nom et l'adresse de celui à qui l'expédition est faite.

Le nom et le domicile du capitaine.

Art. 276. If, before the departure of the vessel, an interdiction of commerce take place with the country to which she is bound, the charter-party or agreement between the parties is dissolved, without any liability on either side for damages.

The shipper is liable for the expenses of lading and unlading his goods.

Art. 277. If superior force prevent the vessel, only for a short time from putting to sea, the charter-party or agreement subsists, and there is no cause for damages on account of the delay.

The agreement remains equally in force, and there can be no increase of freight, if the detention by superior force happen during the voyage.

Art. 278. The shipper may, during the detention of the vessel, cause his goods to be unladen at his own expense, on condition of reshipping them, or of indemnifying the master.

Art. 279. In case of blockade of the port whither the vessel is bound, the master is required, if he have no contrary orders, to go to one of the neighbouring ports of the same nation, in which he may be permitted to enter.

Art. 280. The vessel, the rigging, and apparel, the freight, and the goods laden on board, are respectively bound for the performance of the charter-party, or agreement, between the parties.

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## TITLE VII.

### *Of the Bill of Lading.*

Art. 281. The bill of lading must express the nature and the quantity as well as the species or qualities of the articles to be transported.

It mentions,

The name of the shipper.

The name and the address of the person to whom the shipment is consigned.

The name and the domicil of the captain, or master.

Le nom et le tonnage du navire.

Le lieu du départ et celui de la destination.

Il énonce,

Le prix du fret.

Il présente en marge les marques et numéros des objets à transporter.

Le connaissement peut être à ordre, ou au porteur, ou à personne dénommée.

Art. 282. Chaque connaissement est fait en quatre originaux au moins :

Un pour le chargeur.

Un pour celui à qui les marchandises sont adressées.

Un pour le capitaine.

Un pour l'armateur du bâtiment.

Les quatre originaux sont signés par le chargeur et par le capitaine, dans les vingt-quatre heures après le chargement.

Le chargeur est tenu de fournir au capitaine, dans le même délai, les acquits des marchandises chargées.

Art. 283. Le connaissement rédigé dans la forme ci-dessus prescrite, fait foi entre toutes les parties intéressées au chargement, et entre elles et les assureurs.

Art. 284. En cas de diversité entre les connaissements d'un même chargement, celui qui sera entre les mains du capitaine fera foi, s'il est rempli de la main du chargeur, ou de celle de son commissionnaire; et celui qui est présenté par le chargeur ou le consignataire sera suivi, s'il est rempli de la main du capitaine.

Art. 285. Tout commissionnaire ou consignataire qui aura reçu les marchandises mentionnées dans les connaissements ou chartes-parties, sera tenu d'en donner reçu au capitaine qui le demandera, à peine de tous dépens, dommages-intérêts, même de ceux de retardement.

The name and the tonnage of the vessel.

The place of departure, and of destination.

It declares,

The price of the freight.

It exhibits, in the margin, the marks and numbers of the articles or packages to be transported.

The bill of lading may be to order, or to bearer, or to some person named therein.

Art. 282. Each bill of lading is made in sets of at least four.

One for the shipper.

One for the person to whom the goods are addressed.

One for the master.

One for the owner of the vessel.

These four original bills are to be signed by the shipper and by the master, within twenty-four hours after the delivery of the goods on board.

The shipper is required to furnish the master, within the same space of time, with the custom-house acquittances, or certificates, for the goods shipped.

Art. 283. The bill of lading drawn up in the form above prescribed, is legal evidence between all the parties interested in the shipment, and between them and the insurers.

Art. 284. In case of variation between the bills of lading of the same set, for the same shipment, that which is in the hands of the master shall be valid, if it be filled up in the handwriting of the shipper, or his agent or factor; and that which is produced by the shipper, or the consignee, shall be followed, if it be filled up in the handwriting of the master.

Art. 285. Every factor, or consignee, who shall have received the goods mentioned in the bills of lading, or charter-parties, shall be bound to give a receipt for the same to the master, if he demand it, under the penalty of being liable for all expenses and damages, even for those of delay.

## TITRE VIII.

### *Du Fret ou Nolis.*

Art. 286. Le prix du loyer d'un navire ou autre bâtiment de mer, est appelé *fret* ou *nolis*.

Il est réglé par les conventions des parties.

Il est constaté par la charte-partie ou par le connaissement.

Il a lieu pour la totalité ou pour partie du bâtiment, pour un voyage entier, ou pour un temps limité, au tonneau, au quintal, à forfait, ou à cueillette, avec désignation du tonnage du vaisseau.

Art. 287. Si le navire est loué en totalité, et que l'affrèteur ne lui donne pas toute sa charge, le capitaine ne peut prendre d'autres marchandises sans le consentement de l'affrèteur.

L'affrèteur profite du fret des marchandises qui complètent le chargement du navire qu'il a entièrement affrétés.

Art. 288. L'affrèteur qui n'a pas chargé la quantité de marchandises portée par la charte-partie, est tenu de payer le fret en entier, et pour le chargement complet auquel il s'est engagé.

S'il en charge davantage, il paie le fret de l'excédant sur le prix réglé par la charte-partie.

Si cependant l'affrèteur, sans avoir rien chargé, rompt le voyage avant le départ, il paiera en indemnité, au capitaine, la moitié du fret convenu par la charte-partie pour la totalité du chargement qu'il devait faire.

Si le navire a reçu une partie de son chargement, et qu'il parte à non-charge, le fret entier sera dû au capitaine.

Art. 289. Le capitaine qui a déclaré le navire d'un plus grand port qu'il n'est, est tenu des dommages-intérêts envers l'affrèteur.

Art. 290. N'est réputé y avoir erreur en la déclaration du

## TITLE VIII.

### *Of the Freight.*

**Art. 286.** The price of the hire of a ship, or other vessel, is called *freight*.

It is regulated by the agreement between the parties.

It is evidenced by the charter-party, or the bill of lading.

It is for the whole or a part of the vessel, for an entire voyage, or for a limited time, by the ton, quintal, in gross, or in detail, with the designation of the tonnage of the vessel.

**Art. 287.** If the entire ship be let to freight, and the merchant do not fill her up, the master cannot take other goods on board without the merchant's consent.

The merchant is entitled to the freight of goods, which are put on board to complete the lading of the ship, the whole of which he has chartered.

**Art. 288.** The merchant who has not laden the quantity of goods stipulated by the charter-party, is bound to pay the freight of the full cargo which he engaged to furnish.

If he lade more, he must pay for the overplus at the price regulated by the charter-party.

If, however, the merchant, without having laden any thing on board, break up the voyage before the departure of the vessel, he shall pay, as an indemnity to the master, one half of the freight agreed upon by the charter-party, for the whole cargo which he was to put on board.

If the vessel has received a part of her cargo, and depart without being full, the whole freight will be due to the master.

**Art. 289.** The master who has declared the vessel to be of a greater burden than she is, shall answer in damages to the merchant.

**Art. 290.** The declaration of the captain is not reputed to be

tonnage d'un navire, si l'erreur n'excède un quarantième, ou si la déclaration est conforme au certificat de jauge.

Art. 291. Si le navire est chargé à cueillette, soit au quintal, au tonneau, ou à forfait, le chargeur peut retirer ses marchandises, avant le départ du navire, en payant le demi-fret.

Il supportera les frais de charge, ainsi que ceux de décharge et de rechargement des autres marchandises qu'il faudrait déplacer, et ceux du retardement.

Art. 292. Le capitaine peut faire mettre à terre, dans le lieu du chargement, les marchandises trouvées dans son navire, si elles ne lui ont point été déclarées, ou en prendre le fret au plus haut prix qui sera payé dans le même lieu pour les marchandises de même nature.

Art. 293. Le chargeur qui retire ses marchandises pendant le voyage, est tenu de payer le fret en entier et tous les frais de déplacement occasionnés par le déchargement; si les marchandises sont retirées pour cause des faits ou des fautes du capitaine, celui-ci est responsable de tous les frais.

Art. 294. Si le navire est arrêté au départ, pendant la route, ou au lieu de sa décharge, par le fait de l'affrèteur, les frais du retardement sont dus par l'affrèteur.

Si ayant été frété pour l'aller et le retour, le navire fait son retour sans chargement ou avec un chargement incomplet, le fret entier est dû au capitaine, ainsi que l'intérêt du retardement.

Art. 295. Le capitaine est tenu des dommages-intérêts envers l'affrèteur, si, par son fait, le navire a été arrêté ou retardé au départ, pendant sa route, ou au lieu de sa décharge.

Ces dommages-intérêts sont réglés par des experts.

Art. 296. Si le capitaine est contraint de faire radoubier le navire pendant le voyage, l'affrèteur est tenu d'attendre, ou de payer le fret en entier.

Dans le cas où le navire ne pourrait être radoubé, le capitaine est tenu d'en louer un autre.



false, if the error do not exceed the fortieth part of the real tonnage of the vessel, or if the declaration be conformable to the certificate of measurement.

Art. 291. If the vessel be laden by different shippers, whether by the quintal, ton, or in gross, the merchant may withdraw his goods before the departure of the vessel, on paying half the freight.

He shall bear the expenses of lading, as well as of unlading, and of relading other goods, which it may be necessary to displace, and also of demurrage.

Art. 292. The master may cause to be landed, in the place of lading his vessel, any goods found on board, which have not been reported to him; or he may take the freight at the highest price paid in that place for goods of the same kind.

Art. 293. The merchant who takes back his goods during the voyage, is bound to pay the whole freight, and all expenses occasioned by the unlading; if the goods be taken out on account of the misconduct of the master, the latter is answerable for all the expenses.

Art. 294. If the vessel be detained at her departure, or in the course of her voyage, or at the place of her discharge, by the act of the merchant, he shall bear all the expenses of the delay.

If the ship, being chartered out and home, come back without a lading, or with an incomplete lading, the whole freight is due to the master, and also compensation for any delay.

Art. 295. The merchant has a right to damages from the master, if, by his act, the vessel has been arrested or detained at her departure, during the voyage, or at the port of discharge.

These damages are determined by referees.

Art. 296. If the master be obliged to have the vessel repaired, during the voyage, the merchant is bound to wait, or to pay the whole freight.

In case the vessel cannot be repaired, the master is bound to hire another.

Si le capitaine n'a pu louer un autre navire, le fret n'est dû qu'à proportion de ce que le voyage est avancé.

Art. 297. Le capitaine perd son fret, et répond des dommages-intérêts de l'affrèteur, si celui-ci prouve que, lorsque le navire a fait voile, il était hors d'état de naviguer.

La preuve est admissible nonobstant et contre les certificats de visite au départ.

Art. 298. Le fret est dû pour les marchandises que le capitaine a été contraint de vendre pour subvenir aux victuailles, radoub, et autres nécessités pressantes du navire, en tenant par lui compte de leur valeur au prix que le reste, ou autre pareille marchandise de même qualité, sera vendu au lieu de la décharge, si le navire arrive à bon port.

Si le navire se perd, le capitaine tiendra compte des marchandises sur le pied qu'il les aura vendues, en retenant également le fret porté aux connaissements.

Art. 299. S'il arrive interdiction de commerce avec le pays pour lequel le navire est en route, et qu'il soit obligé de revenir avec son chargement, il n'est dû au capitaine que le fret de l'aller, quoique le vaisseau ait été affrété pour l'aller et le retour.

Art. 300. Si le vaisseau est arrêté dans le cours de son voyage par l'ordre d'une puissance,

Il n'est dû aucun fret pour le temps de sa détention, si le navire est affrété au mois; ni augmentation de fret, s'il est loué au voyage.

La nourriture et les loyers de l'équipage pendant la détention du navire, sont réputés avaries.

Art. 301. Le capitaine est payé du fret des marchandises jetées à la mer pour le salut commun, à la charge de contribution.

Art. 302. Il n'est dû aucun fret pour les marchandises perdues par naufrage ou échouement, pillées par des pirates, ou prises par les ennemis.

Le capitaine est tenu de restituer le fret qui lui aura été avancé, s'il n'y a convention contraire.

If the master cannot hire another vessel, the freight is due only in proportion to the voyage performed.

Art. 297. The master loses his freight, and is answerable in damages to the merchant, if the latter prove that when the vessel sailed she was not seaworthy.

This proof is admissible though in contradiction to the certificate of survey, at her departure.

Art. 298. Freight is due for goods which the master has been obliged to sell to furnish provisions, repairs, and other necessities for the vessel, he being accountable for the value of the goods thus sold, at the price of the rest, or of similar goods of the same quality at the place of discharge, if the ship arrive safe.

If the vessel be lost, the master shall account for the goods at the rate at which he sold them, retaining likewise the freight according to the bill of lading.

Art. 299. If an interdiction of commerce take place with the country to which the ship is bound, and she be obliged to return with her lading, the master shall be entitled only to the freight for the outward voyage, though the vessel be freighted out and home.

Art. 300. If the vessel be arrested in the course of her voyage by order of a sovereign power,

No freight is due for the time of her detention, if the vessel be chartered by the month; nor increase of freight, if chartered for the voyage.

The wages and maintenance of the crew, during the detention, are reputed an average loss.

Art. 301. The master is to be paid the freight of goods thrown overboard for the common safety, at the charge of a general contribution.

Art. 302. No freight is due for goods lost by shipwreck or stranding, pillage of pirates, or capture of enemies.

The master is bound to refund the freight if paid in advance, unless there be a contrary agreement.

**Art. 303.** Si le navire et les marchandises sont rachetés, ou si les marchandises sont sauvées du naufrage, le capitaine est payé du fret jusqu'au lieu de la prise ou du naufrage.

Il est payé du fret entier en contribuant au rachat, s'il conduit les marchandises au lieu de leur destination.

**Art. 304.** La contribution pour le rachat se fait sur le prix courant des marchandises au lieu de leur décharge, déduction faite des frais, et sur la moitié du navire et du fret.

Les loyers des matelots n'entrent point en contribution.

**Art. 305.** Si le consignataire refuse de recevoir les marchandises, le capitaine peut, par autorité de justice, en faire vendre pour le paiement de son fret, et faire ordonner le dépôt du surplus.

S'il y a insuffisance, il conserve son recours contre le chargeur.

**Art. 306.** Le capitaine ne peut retenir les marchandises dans son navire faute de paiement de son fret.

Il peut, dans le temps de la décharge, demander le dépôt en mains tierces jusqu'au paiement de son fret.

**Art. 307.** Le capitaine est préféré, pour son fret, sur les marchandises de son chargement, pendant quinzaine après leur délivrance, si elles n'ont passé en mains tierces.

**Art. 308.** En cas de faillite des chargeurs ou réclamateurs avant l'expiration de la quinzaine, le capitaine est privilégié sur tous les créanciers pour le paiement de son fret et des avaries qui lui sont dues.

**Art. 309.** En aucun cas le chargeur ne peut demander de diminution sur le prix du fret.

**Art. 310.** Le chargeur ne peut abandonner pour le fret les marchandises diminuées de prix ou détériorées par leur vice propre ou par cas fortuit.

Si toutefois des futailles contenant vin, huile, miel, et autres liquides, ont tellement coulé qu'elles soient vides ou presque vides, lesdites futailles pourront être abandonnées pour le fret.

**Art. 303.** If the vessel and the cargo be ransomed, or if the cargo be saved from shipwreck, the master shall be paid the freight as far as the place of capture or shipwreck.

He shall be paid his full freight, he contributing to the ransom, if he carry the goods to their place of destination.

**Art. 304.** The contribution for the ransom is to be made on the value of the goods at the market price, in the place of their delivery, deducting the costs and expenses; and on one half the value of the ship and the freight.

The wages of the seamen are not subject to contribution.

**Art. 305.** If the consignee refuse to receive the goods, the master may, by judicial authority, cause part of them to be sold for the payment of his freight, and the remainder to be deposited.

If they be inadequate to the payment of the freight, he preserves his remedy against the merchant who shipped them.

**Art. 306.** The master cannot retain the goods in his vessel, in default of payment of his freight.

He may, whilst the vessel is unloading, require the goods to be deposited in the hands of a third person, until the payment of his freight.

**Art. 307.** The master has a lien, and prior right for freight on the goods which were laden on board his vessel, for the space of fifteen days after their delivery, if they have not passed into the hands of third persons.(38)

**Art. 308.** In case of failure of the shippers or claimants, before the expiration of the fifteen days, the master is privileged over all the other creditors, for the payment of his freight and the averages due to him.

**Art. 309.** In no case can the merchant demand a diminution in the price of the freight.

**Art. 310.** The merchant cannot abandon for the freight, goods which are diminished in value, or damaged from internal defect, or by accident.

If, however, casks containing wine, oil, honey, and other liquids, have leaked out so much that they are empty, or nearly empty, such casks may be abandoned for the freight.

Sur les agrès et apparaux.

Sur l'armement et les victuailles.

Sur le chargement.

Sur la totalité de ces objets conjointement, ou sur une partie déterminée de chacun d'eux.

Art. 316. Tout emprunt à la grosse, fait pour une somme excédant la valeur des objets sur lesquels il est affecté, peut être déclaré nul, à la demande du prêteur, s'il est prouvé qu'il y a fraude de la part de l'emprunteur.

Art. 317. S'il n'y a fraude, le contrat est valable jusqu'à la concurrence de la valeur des effets affectés à l'emprunt, d'après l'estimation qui en est faite ou convenue.

Le surplus de la somme empruntée est remboursé avec intérêt au cours de la place.

Art. 318. Tous emprunts sur le fret à faire du navire et sur le profit espéré des marchandises sont prohibés.

Le prêteur, dans ce cas, n'a droit qu'au remboursement du capital, sans aucun intérêt.

Art. 319. Nul prêt à la grosse ne peut être fait aux matelots ou gens de mer sur leurs loyers ou voyages.

Art. 320. Le navire, les agrès et les apparaux, l'armement et les victuailles, même le fret acquis, sont affectés par privilège au capital et intérêts de l'argent donné à la grosse sur le corps et quille du vaisseau.

Le chargement est également affecté au capital et intérêts de l'argent donné à la grosse sur le chargement.

Si l'emprunt a été fait sur un objet particulier du navire ou du chargement, le privilège n'a lieu que sur l'objet, et dans la proportion de la quotité affectée à l'emprunt.

Art. 321. Un emprunt à la grosse fait par le capitaine dans le lieu de la demeure des propriétaires du navire, sans leur autorisation authentique ou leur intervention dans l'acte, ne donne action et privilège que sur la portion que le capitaine peut avoir au navire et au fret.

Art. 322. Sont affectées aux sommes empruntées, même dans le lieu de la demeure des intéressés, pour radoub et victuailles,

On the rigging and apparel.

On the outfits and provisions.

On the cargo.

On the whole of these subjects conjointly, or on some determined part of each, or either of them.

Art. 316. Loans on bottomry, or at respondentia, made for a sum exceeding the value of the subject matter on which they are effected, may be declared void on the demand of the lender, if fraud, on the part of the borrower, be proved.

Art. 317. If there be no fraud, the contract is valid to the extent of the value of the subject matter on which the loan is effected, according to the valuation made or agreed upon.

The balance due on the amount borrowed, is to be repaid with interest at the current rate of the place.

Art. 318. All loans on the freight to be earned by the vessel, and on the expected profit of the goods, are prohibited.

The lender, in this case, has a right only to the reimbursement of his principal, without any interest.

Art. 319. No loan of the nature of bottomry, or respondentia, can be made to seamen on their wages or voyages.

Art. 320. The vessel, her rigging and apparel, her outfits and provisions, even the freight already earned, are subject to a lien, by privilege, for the principal and interest of money lent on bottomry, on the body and keel of the vessel.

The cargo is equally bound for the principal and interest of money lent at respondentia on the cargo.

If the loan has been made on some particular article belonging to the ship or cargo, the lien takes effect, only on that article, and in proportion to its fixed valuation.

Art. 321. A loan on bottomry, made to the master in the place of residence of the owners of the vessel, without their legitimate authorization, or their intervention in the act, gives a right of action and privilege only on the share or interest which the master may have in the vessel and freight.

Art. 322. The sums lent, even in the place of residence of the parties interested in a vessel, for repairs and provisions, are a

qu'elles ont été chargées dans le navire, ou dans les gabares pour les y porter, jusqu'au jour où elles sont délivrées à terre.

Art. 329. Celui qui emprunte à la grosse sur des marchandises, n'est point libéré par la perte du navire et du chargement, s'il ne justifie qu'il y avait pour son compte des effets jusqu'à la concurrence de la somme empruntée.

Art. 330. Les prêteurs à la grosse contribuent, à la décharge des emprunteurs, aux avaries communes.

Les avaries simples sont aussi à la charge des prêteurs, s'il n'y a convention contraire.

Art. 331. S'il y a contrat à la grosse et assurance sur le même navire ou sur le même chargement, le produit des effets sauvés du naufrage est partagé entre le prêteur à la grosse, pour son capital seulement, et l'assureur, pour les sommes assurées, au marc le franc de leur intérêt respectif, sans préjudice des privilèges établis à l'art. 191.

## TITRE X.

### DES ASSURANCES.

#### SECTION PREMIÈRE.

##### *Du Contrat d'Assurance, de sa Forme et de son Objet.*

Art. 332. Le contrat d'assurance est rédigé par écrit.

Il est daté du jour auquel il est souscrit.

Il y est énoncé si c'est avant ou après midi.

Il peut être fait sous signature privée.

Il ne peut contenir aucun blanc.

Il exprime,

Le nom et le domicile de celui qui fait assurer, sa qualité de propriétaire ou de commissionnaire.

Le nom et la désignation du navire.



the day of their being laden on board the vessel, or in the lighters to be carried on board, until the day of their being landed.

Art. 329. He who borrows at *respondentia* on goods, is not discharged by the loss of the ship and cargo, unless he prove that there were on board, for his account, effects to the amount of the sum borrowed.

Art. 330. The lenders on bottomry and at *respondentia* contribute to a general average, in discharge of the borrowers.

Particular average is also at the charge of the lenders, if there be no agreement to the contrary.

Art. 331. If there be a contract of bottomry and of insurance on the same vessel, or on the same cargo, the proceeds of the effects saved from shipwreck are divided between the lender on bottomry, *for his principal solely*, and the insurer, for the amount insured, *ratably according to their respective interests*, without prejudice to the privileges established by article 101.

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## TITLE X.

### OF INSURANCE.

#### SECTION I.

##### *Of the Contract of Insurance, its Form and Object.*

Art. 332. The contract of insurance is drawn in writing.

It is dated the day on which it is subscribed.

It mentions whether signed before or after noon.

It may be made under private signature.

It cannot contain any blanks.

It expresses,

The name and place of residence of the person for whose account the insurance is made, his quality of owner or agent.

The name and description of the vessel.

Le nom du capitaine.

Le lieu où les marchandises ont été ou doivent être chargées.

Le port d'où ce navire a dû ou doit partir.

Les ports ou rades dans lesquels il doit charger ou décharger.

Ceux dans lesquels il doit entrer.

La nature et la valeur ou l'estimation des marchandises ou objets que l'on fait assurer.

Les temps auxquels les risques doivent commencer et finir.

La somme assurée.

La prime ou le coût de l'assurance.

La soumission des parties à des arbitres, en cas de contestation, si elle a été convenue.

Et généralement toutes les autres conditions dont les parties sont convenues.

Art. 333. La même police peut contenir plusieurs assurances, soit à raison des marchandises, soit à raison du taux de la prime, soit à raison de différents assureurs.

Art. 334. L'assurance peut avoir pour objet,

Le corps et quille du vaisseau, vide ou chargé, armé ou non armé, seul ou accompagné.

Les agrès et appareils.

Les armements.

Les victuailles.

Les sommes prêtées à la grosse.

Les marchandises du chargement, et toutes autres choses ou valeurs estimables à prix d'argent, sujettes aux risques de la navigation.

Art. 335. L'assurance peut être faite sur le tout ou sur une partie desdits objets, conjointement ou séparément.

Elle peut être faite en temps de paix ou en temps de guerre, avant ou pendant le voyage du vaisseau.

Elle peut être faite pour l'aller et le retour, ou seulement pour l'un des deux ; pour le voyage entier ou pour un temps limité.

Pour tous voyages et transports par mer, rivières et canaux navigables.

Art. 336. En cas de fraude dans l'estimation des effets assurés,

The name of the master.

The place where the goods have been, or are to be shipped.

The port whence the vessel has sailed, or is about to sail.

The ports or harbours in which she is to lade or unlade.

Those at which she is to touch, or trade.

The nature and the value, or estimate of the goods, or subject insured.

The time when the risk is to commence and to end.

The sum insured.

The premium, or cost of the insurance.

The submission of the parties to arbitrators, in case of dispute, if it has been so agreed.

And generally, every other condition or covenant stipulated between the parties.

Art. 333. The same policy may contain several insurances, whether on account of the nature of the goods, or the rate of premium, or the different insurers.

Art. 334. The subject of insurance may be,

The body and keel of a vessel, empty or laden, armed or not armed, alone, or in company.

The rigging and apparel.

The outfits and equipment.

The provisions.

The sums lent on bottomry or at respondentia.

The goods on board, and every other article or thing capable of a valuation in money, and subject to the risks of navigation.(39)

Art. 335. Insurance may be made on the whole or a part of the said objects, conjointly or separately.

It may be made in time of peace or of war, before or during the voyage of the vessel.

It may be made for the voyage out and home, or only for one of the two; for the whole voyage, or a limited time.

For all voyages or transportations by sea, rivers or navigable canals.

Art. 336. In case of fraud in the valuation of the effects in-

en cas de supposition ou de falsification, l'assureur peut faire procéder à la vérification et estimation des objets, sans préjudice de toutes autres poursuites, soit civiles, soit criminelles.

**Art. 337.** Les chargements faits aux échelles du Levant, aux côtes d'Afrique et autres parties du monde, pour l'Europe, peuvent être assurés sur quelque navire qu'ils aient lieu, sans désignation du navire ni du capitaine.

Les marchandises elles-mêmes peuvent, en ce cas, être assurées sans désignation de leur nature et espèce.

Mais la police doit indiquer celui à qui l'expédition est faite ou doit être consignée, s'il n'y a convention contraire dans la police d'assurance.

**Art. 338.** Tout effet dont le prix est stipulé dans le contrat en monnaie étrangère, est évalué au prix que la monnaie stipulée vaut en monnaie de France, suivant le cours à l'époque de la signature de la police.

**Art. 339.** Si la valeur des marchandises n'est point fixée par le contrat, elle peut être justifiée par les factures ou par les livres : à défaut l'estimation en est faite suivant le prix courant au temps et au lieu du chargement, y compris tous les droits payés et les frais faits jusqu'à bord.

**Art. 340.** Si l'assurance est faite sur le retour d'un pays où le commerce ne se fait que par troc, et que l'estimation des marchandises ne soit pas faite par la police, elle sera réglée sur le pied de la valeur de celles qui ont été données en échange, en y joignant les frais de transport.

**Art. 341.** Si le contrat d'assurance ne règle point le temps des risques, les risques commencent et finissent dans le temps réglé par l'article 323. pour les contrats à la grosse.

**Art. 342.** L'assureur peut faire réassurer par d'autres les effets qu'il a assurés.

L'assuré peut faire assurer le coût de l'assurance.

La prime de réassurance peut être moindre ou plus forte que celle de l'assurance.

ured of misrepresentation or falsification, the insurer may cause a verification and estimate to be made of the objects insured, without prejudice to any other proceedings, either civil or criminal.

**Art. 337.** Shipments made in the ports of the Levant, on the coasts of Africa, and in other parts of the world, for Europe, may be insured on any vessel in which they may have taken place, without designating the vessel or the master.

Goods may, in this case, be insured without designating their nature and species.

But the policy must mention the name of the person to whom the shipment is made, or is to be delivered, unless there be a stipulation to the contrary in the policy of insurance itself.

**Art. 338.** Every article, the value of which is stated in the policy, in foreign money, is to be estimated at the price of the foreign money in France, according to the current rate at the time of signing the policy.

**Art. 339.** If the value of the goods be not determined by the policy, it may be proved by the invoices or books of the shipper: in default of which proof, the valuation is to be made according to the current price, at the time and in the place of the shipment, including all duties and expenses until laden on board.

**Art. 340.** If insurance be made on the returns, from a country where commerce is carried on only by exchange, and the valuation of the goods be not made in the policy, it shall be regulated according to the value of those which were given in exchange, including the expenses of transportation.

**Art. 341.** If the contract of insurance do not fix the duration of the risk, it commences and ends at the periods regulated by article 328. for contracts of bottomry and respondentia.

**Art. 342.** The insurer may cause to be reinsured by others, to cover himself, the property which he has insured.

The insured may have insurance effected on the premium and charges of insurance.

The premium of reinsurance may be less or greater than that of the first insurance.

Art. 343. L'augmentation de prime qui aura été stipulée en temps de paix pour le temps de guerre qui pourrait survenir, et dont la quotité n'aura pas été déterminée par les contrats d'assurance, est réglée par les tribunaux, en ayant égard aux risques, aux circonstances, et aux stipulations de chaque police d'assurance.

Art. 344. En cas de perte des marchandises assurées et chargées pour le compte du capitaine sur le vaisseau qu'il commande, le capitaine est tenu de justifier aux assureurs l'achat des marchandises, et d'en fournir un connaissement signé par deux des principaux de l'équipage.

Art. 345. Tout homme de l'équipage, et tout passager qui apportent des pays étrangers des marchandises assurées en France, sont tenus d'en laisser un connaissement dans les lieux où le chargement s'effectue, entre les mains du consul de France, et à défaut, entre les mains d'un Français, notable négociant, ou du magistrat du lieu.

Art. 346. Si l'assureur tombe en faillite lorsque le risque n'est pas encore fini, l'assuré peut demander caution, ou la résiliation du contrat.

L'assureur a le même droit en cas de faillite de l'assuré.

Art. 347. Le contrat d'assurance est nul, s'il a pour objet,

Le fret des marchandises existantes à bord du navire.

Le profit espéré des marchandises.

Les loyers des gens de mer.

Les sommes empruntées à la grosse.

Les profits maritimes des sommes prêtées à la grosse.

Art. 348. Toute réticence, toute fausse déclaration de la part de l'assuré, toute différence entre le contrat d'assurance et le connaissement, qui diminuerait l'opinion du risque ou en changeraient le sujet, annulent l'assurance.

L'assurance est nulle, même dans le cas où la réticence, la fausse déclaration, ou la différence, n'auraient pas influé sur le dommage ou la perte de l'objet assuré.

**Art. 343.** The increase of premium stipulated in time of peace for a state of war which may take place, and the proportion of which is not determined by the contract of insurance, shall be regulated by the tribunals, having regard to the risks, circumstances, and stipulations, of each policy of insurance.

**Art. 344.** In case of the loss of goods insured and laden for the account of the master, on board the vessel which he commands, he is required to prove to the insurers, the purchase of the goods, and to furnish a bill of lading of them, signed by two of the principal persons of the crew.

**Art. 345.** Every person belonging to the crew, and every passenger who brings from a foreign country goods, on which insurance has been effected in France, is required to leave a bill of lading of them in the place of their shipment, in the hands of the French consul, and where there is no French consul, in the hands of a French merchant of distinction, or the magistrate of the place.

**Art. 346.** If the insurer fail before the risk is ended, the insured may demand security, or the dissolution of the contract.

The insurer has the same right in case of the failure of the insured.

**Art. 347.** The contract of insurance is void if the subject matter of it be,

The freight of goods still existing on board of the vessel.

The expected profit on goods.

The wages of seamen.

The sums lent on bottomry, or at respondentia.

The maritime interest on money lent on bottomry, or at respondentia.(40)

**Art. 348.** Any concealment, any misrepresentation on the part of the insured, any variation between the contract of insurance and the bill of lading, which would diminish the opinion of the risk, or change the subject matter of it, annuls the insurance.

The insurance is void, even where the concealment, misrepresentation, or variation, would have had no influence on the damage or loss of the property insured.

## SECTION II.

*Des Obligations de l'Assureur et de l'Assuré.*

Art. 349. Si le voyage est rompu avant le départ du vaisseau, même par le fait de l'assuré, l'assurance est annulée; l'assureur reçoit, à titre d'indemnité, demi pour cent de la somme assurée.

Art. 350. Sont aux risques des assureurs toutes pertes et dommages qui arrivent aux objets assurés, par tempête, naufrage, échouement, abordage fortuit, changements forcés de route, de voyage ou de vaisseau, par jet, feu, prise, pillage, arrêt par ordre de puissance, déclaration de guerre, représailles, et généralement par toutes les autres fortunes de mer.

Art. 351. Tout changement de route, de voyage ou de vaisseau, et toutes pertes et dommages provenant du fait de l'assuré, ne sont point à la charge de l'assureur; et même la prime lui est acquise. s'il a commencé à courir les risques.

Art. 352. Les déchets, diminutions et pertes qui arrivent par le vice propre de la chose, et les dommages causés par le fait et faute des propriétaires, affréteurs ou chargeurs, ne sont point à la charge des assureurs.

Art. 353. L'assureur n'est point tenu des prévarications et fautes du capitaine et de l'équipage, connues sous le nom de *baraterie de patron*, s'il n'y a convention contraire.

Art. 354. L'assureur n'est point tenu du pilotage, touage et lamanage, ni d'aucune espèce de droits imposés sur le navire et les marchandises.

Art. 355. Il sera fait désignation dans la police, des marchandises sujettes, par leur nature, à détérioration particulière ou diminution, comme blés ou sels, ou marchandises susceptibles de coulage; sinon les assureurs ne répondront point des dommages ou pertes qui pourraient arriver à ces mêmes denrées, si ce n'est toutefois que l'assuré eût ignoré la nature du chargement lors de la signature de la police.



## SECTION II.

### *Of the Obligations of the Insurer and the Insured.*

Art. 349. If the voyage be broken up before the departure of the vessel, even by the act of the insured, the insurance is void; the insurer receives, by way of indemnity, a half per cent. on the sum insured.

Art. 350. The insurer is liable for all losses and damages which may happen to the property insured, by storm, shipwreck, stranding with partial wreck, running foul, forced changes of the course of the voyage or of the vessel; by jettison, fire, capture, pillage, arrest of princes, declaration of war, reprisals, and generally, by every other accident of the sea.(41)

Art. 351. Any change of the route, voyage or vessel, discharges the insurer, and he is not liable for any loss or damage occasioned by the act of the insured, but he is entitled to the premium, if the risk has commenced.(42)

Art. 352. The insurer is not liable for any damage, diminution or loss which happens from the internal defect of the article, or is caused by the act and fault of the owners, freighters or shippers.

Art. 353. The insurer is not liable for the misconduct or faults of the captain and crew, known by the name of *barratry of the master*, unless there be an agreement to the contrary.(43)

Art. 354. The insurer is not chargeable with pilotage, towage, and load-manage, nor any species of duty imposed on the vessel and cargo.

Art. 355. Goods which, by their nature, are subject to particular detriment or diminution, as grain, salt, or merchandise liable to leakage, must be designated in the policy, in default of which, the insurer will not be answerable for the damages or losses which may happen to these articles, unless, however, the insured were ignorant of the nature of the cargo when the policy was signed.

Art. 356. Si l'assurance a pour objet des marchandises pour l'aller et le retour, et si le vaisseau étant parvenu à sa première destination, il ne se fait point de chargement en retour, ou si le chargement en retour n'est pas complet, l'assureur reçoit seulement les deux tiers proportionnels de la prime convenue, s'il n'y a stipulation contraire.

Art. 357. Un contrat d'assurance ou de réassurance consenti pour une somme excédant la valeur des effets chargés, est nul à l'égard de l'assuré seulement, s'il est prouvé qu'il y a dol ou fraude de sa part.

Art. 358. S'il n'y a ni dol ni fraude, le contrat est valable jusqu'à concurrence de la valeur des effets chargés, d'après l'estimation qui en est faite ou convenue.

En cas de pertes, les assureurs sont tenus d'y contribuer chacun à proportion des sommes par eux assurées.

Ils ne reçoivent pas la prime de cet excédant de valeur, mais seulement l'indemnité de demi pour cent.

Art. 359. S'il existe plusieurs contrats d'assurance faits sans fraude sur le même chargement, et que le premier contrat assure l'entière valeur des effets chargés, il subsistera seul.

Les assureurs qui ont signé les contrats subséquents, sont libérés ; ils ne reçoivent que demi pour cent de la somme assurée.

Si l'entière valeur des effets chargés n'est pas assurée par le premier contrat, les assureurs qui ont signé les contrats subséquents, répondent de l'excédant en suivant l'ordre de la date des contrats.

Art. 360. S'il y a des effets chargés pour le montant des sommes assurées, en cas de perte d'une partie, elle sera payée par tous les assureurs de ces effets, au marc le franc de leur intérêt.

Art. 361. Si l'assurance a lieu divisément pour des marchandises qui doivent être chargées sur plusieurs vaisseaux désignés, avec énonciation de la somme assurée sur chacun, et si le chargement entier est mis sur un seul vaisseau, ou sur un moindre nombre qu'il n'en est désigné dans le contrat, l'assureur n'est tenu que de la somme qu'il a assurée sur le vaisseau ou sur les vaisseaux qu'il

**Art. 356.** If the subject of insurance be goods out and home, and if the vessel, having reached her outward port, bring home no lading, or an incomplete one, the insurer receives only two proportional third parts of the premium agreed upon, unless there be a contrary stipulation.(44)

**Art. 357.** A contract of insurance, or of reinsurance, entered into for a sum exceeding the value of the property on board, is void with respect to the rights of the insured only, if deception or fraud, on his part, be proved.

**Art. 358.** If there be neither deception nor fraud, the contract is valid to the extent of the amount of the goods laden on board, according to the valuation made or agreed upon.

In case of loss, the insurers are bound to contribute to the payment, each in proportion to the sum by him subscribed.

They receive no premium for the surplus amount insured, but only an indemnity of a half per cent.

**Art. 359.** If there exist several contracts of insurance, made without fraud on the same cargo, and the first policy cover the entire value of the goods laden on board the vessel, it shall alone be in force.

The insurers who have signed the subsequent policies are discharged ; they receive only a half per cent. on the sum insured.

If the entire value of the goods shipped, be not covered by the first contract, the insurers who have signed the subsequent policies are answerable for the deficiency, according to the order of the date of the policies.(45)

**Art. 360.** If there be goods on board to the full amount of the sums insured, in case of a partial loss, the insurers shall all contribute to the payment ratably, in proportion to the sums insured by them respectively.

**Art. 361.** If insurance be made separately on goods which are to be shipped in several vessels, specified in the policy, with the sum insured on each, and if the whole shipment be made in a single vessel, or in a less number than were designated in the contract, the insurer is liable only for the sum which he has insured in the vessel or vessels which have received the shipment,

ont reçu le chargement, nonobstant la perte de tous les vaisseaux désignés; et il recevra néanmoins demi pour cent des sommes dont les assurances se trouvent annulées.

Art. 362. Si le capitaine a la liberté d'entrer dans différents ports pour compléter ou échanger son chargement, l'assureur ne court les risques des effets assurés que lorsqu' ils sont à bord, s'il n'y a convention contraire.

Art. 363. Si l'assurance est faite pour un temps limité, l'assureur est libre après l'expiration du temps, et l'assuré peut faire assurer les nouveaux risques.

Art. 364. L'assureur est déchargé des risques, et la prime lui est acquise, si l'assuré envoie le vaisseau en un lieu plus éloigné que celui qui est désigné par le contrat, quoique sur la même route.

L'assurance a son entier effet, si le voyage est raccourci.

Art. 365. Toute assurance faite après la perte ou l'arrivée des objets assurés, est nulle, s'il y a présomption qu'avant la signature du contrat, l'assuré a pu être informé de la perte, ou l'assureur de l'arrivée, des objets assurés.

Art. 366. La présomption existe, si en comptant trois quarts de myriamètre (une lieue et demie) par heure, sans préjudice des autres preuves, il est établi que de l'endroit de l'arrivée ou de la perte du vaisseau, ou du lieu où la première nouvelle en est arrivée, elle a pu être portée dans le lieu où le contrat d'assurance a été passé, avant la signature du contrat.

Art. 367. Si cependant l'assurance est faite sur bonnes ou mauvaises nouvelles, la présomption mentionnée dans les articles précédents n'est point admise.

Le contrat n'est annulé que sur la preuve que l'assuré savait la perte, ou l'assureur l'arrivée du navire, avant la signature du contrat.

notwithstanding the loss of all the vessels specified; and he shall, nevertheless, receive a half per cent. on the sums the insurance of which is rendered void.

Art. 362. If the captain has liberty to touch at different ports, in order to complete or change his lading, the insurer runs the risk of the goods insured, only when they are on board the vessel, unless there be an agreement to the contrary.

Art. 363. If the insurance be made for a limited time, the insurer is discharged after the expiration of the time, and the insured may cause a new insurance to be made against further risks.

Art. 364. The insurer is discharged from the risks, and entitled to the premium, if the insured send the vessel to a place more distant than that which is specified in the policy, although in the same course.

The insurance has its full effect, though the voyage be shortened.

Art. 365. Every insurance made after the loss or arrival of the property insured is void, if a presumption exist that before the signing of the policy, the insured might have been informed of the loss, or the insurer of the arrival of the subject of the insurance.

Art. 366. The presumption exists (independently of other proof) if by reckoning three quarters of a myriametre (about 4 miles) per hour, it be established that, from the place of arrival or loss of the vessel, or from the place whence the first news of either has arrived, advice might have been brought to the place where the contract of insurance was entered into, before the signing of the same.

Art. 367. If, however, the insurance be made, whether the news be good or bad, (that is, on property "lost or not lost,") the presumption mentioned in the preceding articles is not admitted.

The contract is annulled, only on proof that the insured knew of the loss, or the insurer the arrival of the vessel, before signing the policy.

Art. 368. En cas de preuve contre l'assuré, celui-ci paye à l'assureur une double prime.

En cas de preuve contre l'assureur, celui-ci paye à l'assuré une somme double de la prime convenue.

Celui d'entre eux contre qui la preuve est faite, est poursuivi correctionnellement.

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### SECTION III.

#### *Du Délaissement.*

Art. 369. Le délaissement des objets assurés peut être fait,  
En cas de prise.

De naufrage.

D'échouement avec bris.

D'innavigabilité par fortune de mer.

En cas d'arrêt d'une puissance étrangère.

En cas de perte ou détérioration des effets assurés, si la détérioration ou la perte va au moins à trois quarts.

Il peut être fait en cas d'arrêt de la part du gouvernement, après le voyage commencé.

Art. 370. Il ne peut être fait avant le voyage commencé.

Art. 371. Tous autres dommages sont réputés avaries, et se règlent, entre les assureurs et les assurés, à raison de leurs intérêts.

Art. 372. Le délaissement des objets assurés ne peut être partiel ni conditionnel.

Il ne s'étend qu'aux effets qui sont l'objet de l'assurance et du risque.

Art. 373. Le délaissement doit être fait aux assureurs dans le

Art. 368. In case concealment be proved against the insured, the latter pays to the insurer a double premium.

In case concealment be proved against the insurer, the latter pays to the insured a sum double the amount of the premium agreed upon.

Either of them against whom the proof of concealment is established, is liable to punishment by the corrective police.

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### SECTION III.

#### *Of Abandonment.*(46)

Art. 369. Abandonment of the subject matter insured may be made, in cases of,

Capture.

Shipwreck.

Stranding with partial wreck.

Disability of the vessel occasioned by the perils of the sea.

Arrest of a foreign power.

Loss or damage of the property insured, if amounting to at least three fourths of its value.

It may also be made in case of arrest on the part of the government, after the commencement of the voyage.

Art. 370. It cannot be made before the commencement of the voyage.

Art. 371. All other damages are reputed average losses, and are to be regulated, between the insurers and the insured, in proportion to their respective interests.

Art. 372. The abandonment of the subject matter insured cannot be either partial, or conditional.

It extends only to the property which is the subject matter of the insurance and the risk.

Art. 373. Abandonment must be made to the insurers within

terme de six mois, à partir du jour de la réception de la nouvelle de la perte arrivée aux ports ou côtes de l'Europe, ou sur celles d'Asie et d'Afrique, dans la Méditerranée, ou bien, en cas de prise, de la réception de celle de la conduite du navire dans l'un des ports ou lieux situés aux côtes ci-dessus mentionnées.

Dans le délai d'un an après la réception de la nouvelle, ou de la perte arrivée, ou de la prise conduite aux colonies des Indes occidentales, aux îles Açores, Canaries, Madère, et autres îles et côtes occidentales d'Afrique et orientales d'Amérique.

Dans le délai de deux ans après la nouvelle des pertes arrivées, ou des prises conduites dans toutes les autres parties du monde.

Et ces délais passés, les assurés ne seront plus recevables à faire le délaissement.

Art. 374. Dans le cas où le délaissement peut être fait, et dans le cas de tous autres accidents aux risques des assureurs, l'assuré est tenu de signifier à l'assureur les avis qu'il a reçus.

La signification doit être faite dans les trois jours de la réception de l'avis.

Art. 375. Si, après un an expiré, à compter du jour du départ du navire, ou du jour auquel se rapportent les dernières nouvelles reçues, pour les voyages ordinaires,

Après deux ans pour les voyages de long cours,

L'assuré déclare n'avoir reçu aucune nouvelle de son navire, il peut faire le délaissement à l'assureur, et demander le paiement de l'assurance, sans qu'il soit besoin d'attestation de la perte.

Après l'expiration de l'an ou des deux ans, l'assuré a pour agir les délais établis par l'article 373.

Art. 376. Dans le cas d'une assurance pour temps limité, après l'expiration des délais établis, comme ci-dessus, pour les voyages ordinaires et pour ceux de long cours, la perte du navire est présumée arrivée dans le temps de l'assurance.



the term of six months, from the day of receiving information of the loss having happened in the ports, or on the coasts of Europe, or on those of Asia, Africa, or the Mediterranean sea, or, in case of capture, within the same space of time, from the receipt of news that the captured vessel has been carried into one of the ports or places situated on the coasts above mentioned.

Within the term of a year after information either of the loss having happened, or the prize carried to the West Indies, the Azores, Canaries, Madeira, and other western islands and coasts of Africa, and eastern of America.

Within the term of two years after information of the loss having happened, or the prize carried to any other part of the world.(47)

And these periods being respectively elapsed, the insured shall no longer be permitted to abandon.

Art. 374. In cases where abandonment may be made, and in every case of loss or accident at the risk of the insurers, the insured is required to make known to the insurer the information he has received.

The notice must be given within three days after the receipt of the information.

Art. 375. If, after the expiration of a year, reckoning from the day of the departure of the vessel, or from the day of receiving the last news from her, for ordinary voyages,

After the expiration of two years for long voyages,

The insured declare that he has received no news from his vessel, he may abandon the property insured to the insurer, and demand the payment of the insurance, without being obliged to prove the loss.

After the expiration of the respective terms of one and two years, the insured is allowed the time established by article 373. in which to prosecute his claim against the insurer.

Art. 376. In the case of an insurance for a limited time, after the expiration of the terms established as above, for ordinary, and long voyages respectively, the loss of the vessel is presumed to have happened within the period of the risk.

Art. 377. Sont réputés voyages de long cours ceux qui se font aux Indes orientales et occidentales, à la mer Pacifique, au Canada, à Terre-Neuve, au Groenland, et aux autres côtes et fleuves de l'Amérique méridionale et septentrionale, aux Açores, Canaries, à Madère, et dans toutes les côtes et pays situés sur l'Océan, au-delà des détroits de Gibraltar et du Sund.

Art. 378. L'assuré peut, par la signification mentionnée en l'article 374. ou faire le délaissement avec sommation à l'assureur de payer la somme assurée dans le délai fixé par le contrat, ou se réserver de faire le délaissement dans les délais fixés par la loi.

Art. 379. L'assuré est tenu, en faisant le délaissement, de déclarer toutes les assurances qu'il a faites ou fait faire, même celles qu'il a ordonnées, et l'argent qu'il a pris à la grosse, soit sur le navire, soit sur les marchandises; faute de quoi, le délai du paiement, qui doit commencer à courir du jour du délaissement, sera suspendu jusqu'au jour où il fera notifier ladite déclaration, sans qu'il en résulte aucune prorogation du délai établi pour former l'action en délaissement.

Art. 380. En cas de déclaration frauduleuse, l'assuré est privé des effets de l'assurance; il est tenu de payer les sommes empruntées, nonobstant la perte ou la prise du navire.

Art. 381. En cas de naufrage ou d'échouement avec bris, l'assuré doit, sans préjudice du délaissement à faire en temps et lieu, travailler au recouvrement des effets naufragés.

Sur son affirmation, les frais de recouvrement lui sont alloués jusqu'à concurrence de la valeur des effets recouverts.

Art. 382. Si l'époque du paiement n'est point fixée par le contrat, l'assureur est tenu de payer l'assurance trois mois après la signification du délaissement.

Art. 383. Les actes justificatifs du chargement et de la perte sont signifiés à l'assureur avant qu'il puisse être poursuivi pour le paiement des sommes assurées.

**Art. 377.** Those are reputed long voyages, which are made to the East and West Indies, to the Pacific Ocean, Canada, Newfoundland, Greenland, and the coasts and islands of North and South America, to the Azores, Canaries, Madeira, and all the coasts and countries situated on the ocean, beyond the Straits of Gibraltar, and the Sound.

**Art. 378.** The insured may, together with the notice mentioned in article 374. either make the abandonment, with a demand on the insurer to pay the sum underwritten, within the period fixed by the policy, or reserve to himself the right of making the abandonment within the periods fixed by law.

**Art. 379.** The insured is required, on making the abandonment, to declare all the insurances he has made, or caused to be made, even those which he has ordered, and also what money he has taken up on bottomry or at respondentia; in default of which, the term of payment, which was to commence running from the date of the abandonment, shall be suspended until the day in which he shall make the aforesaid declaration; but there shall not thence result any prolongation of the time allowed for making the abandonment.

**Art. 380.** In case of a fraudulent declaration, the insured shall be deprived of the benefit of the insurance, and shall be bound to pay the sums borrowed on bottomry or respondentia, notwithstanding the loss or capture of the vessel.

**Art. 381.** In case of shipwreck, or stranding with partial wreck, the insured must use his best exertions to save the property at hazard, without prejudice to the right of abandonment to be made in due time and place.

The expenses attending the recovery are allowed him on his affirmation, to the extent of the value of the property saved.

**Art. 382.** If the time of payment be not fixed by the contract, the insurer is required to pay the sum underwritten within three months from the date of the abandonment.

**Art. 383.** The documents in proof of the property, and of the loss, are to be exhibited to the insurer before he can be prosecuted for the payment of the sums insured.

**Art. 384.** L'assureur est admis à la preuve des faits contraires à ceux qui sont consignés dans les attestations.

L'admission à la preuve ne suspend pas les condamnations de l'assureur au paiement provisoire de la somme assurée, à la charge par l'assuré de donner caution.

L'engagement de la caution est éteint après quatre années révolues, s'il n'y a pas eu de poursuite.

**Art. 385.** Le délaissement signifié et accepté ou jugé valable, les effets assurés appartiennent à l'assureur, à partir de l'époque du délaissement.

L'assureur ne peut, sous prétexte du retour du navire, se dispenser de payer la somme assurée.

**Art. 386.** Le fret des marchandises sauvées, quand même il aurait été payé d'avance, fait partie du délaissement du navire, et appartient également à l'assureur, sans préjudice des droits des prêteurs à la grosse, de ceux des matelots pour leur loyer, et des frais et dépenses pendant le voyage.

**Art. 387.** En cas d'arrêt de la part d'une puissance, l'assuré est tenu de faire la signification à l'assureur dans les trois jours de la réception de la nouvelle.

Le délaissement des objets arrêtés ne peut être fait qu'après un délai de six mois de la signification, si l'arrêt a eu lieu dans les mers d'Europe, dans la Méditerranée, ou dans la Baltique.

Qu'après le délai d'un an, si l'arrêt a eu lieu en pays plus éloigné.

Ces délais ne courent que du jour de la signification de l'arrêt.

Dans le cas où les marchandises arrêtées seraient périssables, les délais ci-dessus mentionnés sont réduits à un mois et demi pour le premier cas, et à trois mois pour le second cas.

**Art. 388.** Pendant les délais portés par l'article précédent, les assurés sont tenus de faire toutes diligences qui peuvent dépendre d'eux, à l'effet d'obtenir la main-levée des effets arrêtés.

Pourront, de leur côté, les assureurs, ou de concert avec les assurés ou séparément, faire toutes démarches à même fin.

Art. 384. The insurer is admitted to adduce proof of facts, in contradiction to those produced by the insured.

The admission of this proof does not suspend the judgment against the insurer, for the provisional payment of the sum insured, under the obligation of the insured to give security.

The engagement of the security is extinguished, after the lapse of four years, if there has been no prosecution.

Art. 385. The abandonment being notified and accepted, or judged valid, the property insured belongs to the insurer, reckoning from the date of the abandonment.

The insurer cannot, under the pretence that the vessel has returned, be excused from paying the sum insured.

Art. 386. The freight of goods saved, even though paid in advance, makes a part of the abandonment of the vessel, and equally belongs to the insurer, without prejudice to the rights of the lenders on bottomry, to those of the seamen for their wages, and to the charges and expenses during the voyage.

Art. 387. In case of arrest by a sovereign power, the insured is required to give notice of it to the insurer, within three months after the receipt of the news.

The abandonment of the property arrested, cannot be made until after the term of six months from the notification, if the arrest took place in the seas of Europe, in the Mediterranean, or in the Baltic.

Until after the term of a year, if the arrest took place in a more distant country.

These terms do not begin until the day of notification of the arrest.

In case the goods seized should be of a perishable nature, the terms above mentioned, are reduced to a month and a half in the first case, and to three months in the second.

Art. 388. During the periods mentioned in the preceding article, the insured are bound to use their best endeavours to obtain the release of the property detained.

The insurers, on their part, may, in concert with the insured, or separately, employ the means in their power to the same end,

Art. 389. Le délaissement à titre d'innavigabilité ne peut être fait, si le navire échoué peut être relevé, réparé, et mis en état de continuer sa route pour le lieu de sa destination.

Dans ce cas, l'assuré conserve son recours sur les assureurs, pour les frais et avaries occasionnés par l'échouement.

Art. 390. Si le navire a été déclaré innavigable, l'assuré sur le chargement est tenu d'en faire la notification dans le délai de trois jours de la réception de la nouvelle.

Art. 391. Le capitaine est tenu, dans ce cas, de faire toutes diligences pour se procurer un autre navire à l'effet de transporter les marchandises au lieu de leur destination.

Art. 392. L'assureur court les risques des marchandises chargées sur un autre navire, dans le cas prévu par l'article précédent, jusqu'à leur arrivée et leur déchargement.

Art. 393. L'assureur est tenu, en outre, des avaries, frais de déchargement, magasinage, rembarquement, de l'excédant du fret, et de tous autres frais qui auront été faits pour sauver les marchandises jusqu'à concurrence de la somme assurée.

Art. 394. Si, dans les délais prescrits par l'article 387, le capitaine n'a pu trouver de navire pour recharger les marchandises et les conduire au lieu de leur destination, l'assuré peut en faire le délaissement.

Art. 395. En cas de prise, si l'assuré n'a pu en donner avis à l'assureur, il peut racheter les effets sans attendre son ordre.

L'assuré est tenu de signifier à l'assureur la composition qu'il aura faite, aussitôt qu'il en aura les moyens.

Art. 396. L'assureur a le choix de prendre la composition à son compte, ou d'y renoncer : il est tenu de notifier son choix à l'assuré dans les vingt-quatre heures qui suivent la signification de la composition.

S'il déclare prendre la composition à son profit, il est tenu de contribuer, sans délai, au paiement du rachat dans les termes de

**Art. 389.** Abandonment on the ground of incapacity to navigate, cannot be made, if the vessel stranded may be got off, refitted, and put in a state to continue her course for the place of her destination.

In this case, the insured preserves his remedy against the insurers, for the expenses and damages occasioned by the stranding.

**Art. 390.** If the vessel has been declared incapable of navigation, the insured on the cargo is required to give notice of it, within the space of three days from the receipt of the news.

**Art. 391.** The captain is bound, in this case, to use every endeavour to procure another vessel for the purpose of transporting the goods to the place of their destination.

**Art. 392.** The insurer runs the risk of the goods laden in another vessel, in the case provided for by the preceding article, until their arrival and discharge.

**Art. 393.** The insurer is besides liable for average loss, charge of unloading the goods, storage, reshipping, the additional freight, and every other expense which shall have been incurred in saving the goods, to the extent of the sum insured.

**Art. 394.** If, within the periods of time prescribed by article 387. the captain has not been able to find a vessel in which to re-ship the goods, and carry them to the place of their destination, the insured may abandon them.

**Art. 395.** In cases of capture, if the insured has not been able to give information of the same to the insurer, he may ransom the property without waiting his orders.

The insured is required, as soon as he has it in his power, to give notice to the insurer of the composition which he has made with the captors.

**Art. 396.** The insurer has the option of taking the composition to his own account, or of renouncing it: he is required to make known his election to the insured within twenty-four hours after receiving notice of the composition.

If he elect to take the composition for his benefit, he is bound to contribute, without delay, to the payment of the ransom ac-

la convention, et à proportion de son intérêt; et il continue de courir les risques du voyage, conformément au contrat d'assurance.

S'il déclare renoncer au profit de la composition, il est tenu au paiement de la somme assurée, sans pouvoir rien prétendre aux effets rachetés.

Lorsque l'assureur n'a pas notifié son choix dans le délai susdit, il est censé avoir renoncé au profit de la composition.

## TITRE XI.

### *Des Avaries.*

Art. 397. Toutes dépenses extraordinaires faites pour le navire et les marchandises, conjointement ou séparément,

Tout dommage qui arrive aux navires et aux marchandises, depuis leur chargement et départ jusqu'à leur retour et déchargement,

Sont réputés avaries.

Art. 398. A défaut de conventions spéciales entre toutes les parties, les avaries sont réglées conformément aux dispositions ci-après.

Art. 399. Les avaries sont de deux classes, avaries grosses ou communes, et avaries simple ou particulières.

Art. 400. Sont avaries communes :

- 1° Les choses données par composition et à titre de rachat du navire et des marchandises.
- 2° Celles qui sont jetées à la mer.
- 3° Les câbles ou mâts rompus ou coupés.
- 4° Les ancres et autres effets abandonnés pour le salut commun.



ording to the terms of the agreement, in proportion to his interest; and he continues to run the risks of the voyage, conformably to the contract of insurance.

If he declare that he renounces the benefit of the composition, he is bound to pay the sum insured, without having any pretensions to the property ransomed.

When the insurer has not given notice of his determination, within the time above mentioned, he is understood to have renounced the benefit of the composition.(48)

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## TITLE XI.

### *Of Average.*

Art. 397. All extraordinary expenses incurred for the ship and the cargo, conjointly, or separately,

All damage happening to the vessel or goods, from the time of their lading and departure, until their arrival and discharge,

Are reputed average losses.

Art. 398. In default of special agreements between the parties, average contributions are regulated conformably to the provisions hereafter mentioned.

Art. 399. Averages are of two kinds, gross, or general average, and simple, or particular average.

Art. 400. The following are general averages :

1st. Things given by composition for the ransom of the vessel and cargo.

2d. Things which are thrown overboard.

3d. Cables or masts broken, or cut away.

4th. Anchors and other articles abandoned for the common safety.

5° Les dommages occasionnés par le jet aux marchandises restées dans le navire.

6° Les pansement et nourriture des matelots blessés en descendant le navire, les loyers et nourriture des matelots pendant la détention, quand le navire est arrêté en voyage par ordre d'une puissance, et pendant les réparations des dommages volontairement soufferts pour le salut commun, si le navire est affrété au mois.

7° Les frais du déchargement pour alléger le navire et entrer dans un havre ou dans une rivière, quand le navire est contraint de la faire par tempête ou par la poursuite de l'ennemi.

8° Les frais faits pour remettre à flot le navire échoué dans l'intention d'éviter la perte totale ou la prise.

Et en général, les dommages soufferts volontairement et les dépenses faites d'après délibérations motivées pour le bien et salut commun du navire et des marchandises depuis leur chargement et départ jusqu'à leur retour et déchargement.

**Art. 401.** Les avaries communes sont supportées par les marchandises et par la moitié du navire et du fret, au marc le franc de la valeur.

**Art. 402.** Le prix des marchandises est établi par leur valeur au lieu du déchargement.

**Art. 403.** Sont avaries particulières :

1° Le dommage arrivé aux marchandises par leur vice propre, par tempête, prise, naufrage ou échouement.

2° Les frais faits pour les sauver.

3° La perte des câbles, ancres, voiles, mâts, cordages, causée par tempête ou autre accident de mer.

Les dépenses résultant de toutes relâches occasionnées soit par la perte fortuite de ces objets, soit par le besoin d'avitaillement, soit par voie d'eau à réparer.

4° La nourriture et le loyer des matelots pendant la détention, quand le navire est arrêté en voyage par ordre d'une puissance, et

5th. Damage occasioned by jettison to the goods remaining in the vessel.

6th. Medical treatment and maintenance of the seamen wounded in defending the vessel, the wages and maintenance of the seamen during the detention, when the vessel is arrested on the voyage by order of a sovereign power, and during the reparations of the damages necessarily sustained for the common safety, if the vessel be freighted by the month.

7th. The expenses of unlading to lighten the ship, in order to facilitate her entrance into a harbour or river, when the vessel is forced to seek shelter by stress of weather or the pursuit of an enemy.

8th. The expenses incurred in getting off a vessel stranded, to prevent a total loss or seizure.

And, in general, the damages necessarily suffered, and the expenses incurred, in consequence of deliberations taken for the security and common safety of the vessel and goods, from the time of their lading and departure until their arrival and discharge.

Art. 401. General average is borne by the goods on board, and by one half the value of the vessel and freight, ratably according to their respective values.

Art. 402. The price of the goods is established by their value at the place of discharge.

Art. 403. The following are particular averages:

1st. The damage happening to goods by their internal defect, by stress of weather, seizure, shipwreck, or stranding.

2d. The expenses incurred in saving them.

3d. The loss of cables, anchors, sails, masts, cordage, caused by storms or other accidents of the sea.

The expenses resulting from any detention in the course of the voyage, whether occasioned by the accidental loss of the aforesaid articles, by the want of provisions, or by the necessity of stopping a leak.

4th. The maintenance and wages of the crew during the detention, when the vessel is arrested on the voyage by order of a

pendant les réparations qu'en est obligé d'y faire, si le navire est affrété au voyage.

5° La nourriture et le loyer des matelets pendant la quarantaine, que le navire soit loué au voyage ou au mois.

Et en général les dépenses faites et le dommage souffert pour le navire seul, ou pour les marchandises seules, depuis leur chargement et départ jusqu'à leur retour et déchargement.

Art. 404. Les avaries particulières sont supportées et payées par le propriétaire de la chose qui a causé le dommage ou occasionné la dépense.

Art. 405. Les dommages arrivés aux marchandises faute par le capitaine d'avoir bien fermé les écoutilles, amarré le navire, fourni de bons guindages, et par tous autres accidents provenant de la négligence du capitaine ou de l'équipage, sont également des avaries particulières supportées par le propriétaire des marchandises, mais pour lesquelles il a son recours contre le capitaine, le navire, et le fret.

Art. 406. Les lamanages, tonages, pilotages, pour entrer dans les havres ou rivières, ou pour en sortir, les droits de congés, visites, rapports, tonnes, balises, ancrages, et autres droits de navigation, ne sont point avaries, mais ils sont de simples frais à la charge du navire.

Art. 407. En cas d'abordage de navire, si l'événement a été purement fortuit, le dommage est supporté, sans répétition, par celui des navires qui l'a éprouvé.

Si l'abordage a été fait par la faute de l'un des capitaines, le dommage est payé par celui qui l'a causé.

S'il y a doute dans les causes de l'abordage, le dommage est réparé à frais communs, et par égale portion, par les navires qui l'ont fait et souffert.

Dans ces deux derniers cas, l'estimation du dommage est faite par experts.

Art. 408. Une demande pour avaries n'est point recevable si l'avarie commune n'excède pas un pour cent de la valeur cumulée

sovereign power, and during the reparations necessary to be made, if the vessel be freighted by the voyage.

5th. The maintenance and wages of the seamen during quarantine, whether the vessel be freighted by the month, or the voyage.

And, in general, the expenses incurred, and the damage sustained by the vessel only, or by the cargo solely, from the time of the lading and departure, until the arrival and discharge.

Art. 404. Particular averages are borne and paid by the owner of the thing which has sustained the damage, or occasioned the expense.

Art. 405. The damage happened to goods by the fault of the captain, in not having well fastened the hatches, lashed the ship, or provided good hoisting tackle, and by every other accident proceeding from the negligence of the master or the crew, are also particular averages to be borne by the owners of the goods, but for which they have a remedy against the master, the ship, and the freight.

Art. 406. Load-manage, towage, and pilotsage, in entering and going out of harbours and rivers, duties of clearance, search, reports, tonnage, beaconage, anchorage, and other duties on navigation, are not averages, but merely expenses at the charge of the vessel.

Art. 407. In case of running foul, if the occurrence was purely accidental, the damage is borne, without remedy, by the suffering vessel.

If the running foul proceeded from the fault of one of the captains, the damage is paid by the one who occasioned it.

If there be a doubt which of the two vessels was in fault in running foul, the damage is to be repaired at their common expense, in equal portions between them.

In these two last cases, the estimation of the damage is made by referees.

Art. 408. A demand of average loss is not admissible, if the general average do not exceed one per cent. of the total value of

du navire et des marchandises, et si l'avarie particulière n'excède pas aussi un pour cent de la valeur de la chose endommagée.

Art. 409. La clause *franc d'avaries* affranchit les assureurs de toutes avaries, soit communes, soit particulières, excepté dans les cas qui donnent ouverture au délaissement; et, dans ces cas, les assurés ont l'option entre le délaissement et l'exercice d'action d'avarie.

## TITRE XII.

### *Du Jet et de la Contribution.*

Art. 410. Si, par tempête ou par la chasse de l'ennemi, le capitaine se croit obligé, pour le salut du navire, de jeter en mer une partie de son chargement, de couper ses mâts, ou d'abandonner ses ancres, il prend l'avis des intéressés au chargement qui se trouvent dans le vaisseau, et des principaux de l'équipage.

S'il y a diversité d'avis, celui du capitaine et des principaux de l'équipage est suivi.

Art. 411. Les choses les moins nécessaires, les plus pesantes et de moindre prix, sont jetées les premières, et ensuite les marchandises du premier pont au choix du capitaine, et par l'avis des principaux de l'équipage.

Art. 412. Le capitaine est tenu de rédiger par écrit la délibération, aussitôt qu'il en a les moyens.

La délibération exprime,

Les motifs qui ont déterminé le jet.

Les objets jetés ou endommagés.

Elle présente la signature des délibérants, ou les motifs de leur refus de signer.

Elle est transcrite sur le registre.

Art. 413. Au premier port où le navire abordera, le capitaine

the ship and cargo, and if the particular average do not also exceed one per cent. of the value of the article damaged.

Art. 409. The clause in a policy of insurance "*free from average,*" exempts the insurers from all average loss, whether general or particular, except in cases which authorize an abandonment; and in such instances, the insured have the option between the abandonment and the claim for average loss.

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## TITLE XII.

### *Of Jettison and Contribution.*

Art. 410. If, by stress of weather, or by the chasing of the enemy, the master thinks himself obliged, for the safety of the vessel, to throw overboard a part of his cargo, to cut away his masts, or abandon his anchors, he takes the advice of the persons interested in the cargo who may be on board the vessel, and of the principal men of the crew.

If there be a difference of opinion, that of the master and the principal men of the crew shall prevail.

Art. 411. Things the least necessary, the most weighty, and of least value, are to be thrown overboard first, and afterwards, the goods between decks, at the choice of the captain, and by the advice of the principal persons of the crew.

Art. 412. The captain is required, as soon as it is in his power, to commit to writing the consultation which took place.

The consultation expresses,

The motives which have determined the jettison.

The articles thrown overboard, or damaged.

It contains the signature of the persons who assisted in the consultation, or the motives of their refusal to sign.

It is transcribed on the ship's journal.

Art. 413. At the first port at which the vessel shall arrive, the

est tenu, dans les vingt-quatre heures de son arrivée, d'affirmer les faits contenus dans la délibération transcrite sur le registre.

Art. 414. L'état des pertes et dommages est fait dans le lieu du déchargement du navire, à la diligence du capitaine et par experts.

Les experts sont nommés par le tribunal de commerce, si le déchargement se fait dans un port français.

Dans les lieux où il n'y a pas de tribunal de commerce, les experts sont nommés par le juge de paix.

Ils sont nommés par le consul de France, et, à son défaut, par le magistrat du lieu, si la décharge se fait dans un port étranger.

Les experts prêtent serment avant d'opérer.

Art. 415. Les marchandises jetées sont estimées suivant le prix courant du lieu du déchargement ; leur qualité est constatée par la production des connaissements, et des factures s'il y en a.

Art. 416. Les experts nommés en vertu de l'article 414. font la répartition des pertes et dommages.

La répartition est rendue exécutoire par l'homologation du tribunal.

Dans les ports étrangers, la répartition est rendue exécutoire par le consul de France, ou, à son défaut, par tout tribunal compétent sur les lieux.

Art. 417. La répartition pour le paiement des pertes et dommages est faite sur les effets jetés et sauvés, et sur moitié du navire et du fret, à proportion de leur valeur au lieu du déchargement.

Art. 418. Si la qualité des marchandises a été déguisée par le connaissement, et qu'elles se trouvent d'une plus grande valeur, elles contribuent sur le pied de leur estimation, si elles sont sauvées.

Elles sont payées d'après la qualité désignée par le connaissement, si elles sont perdues.



master is required, within twenty-four hours after his arrival, to depose to the facts contained in the consultation, transcribed on the journal.

Art. 414. The statement of the losses and damages is made out in the place of the discharge of the vessel, at the instance of the master, by referees.

The referees are appointed by the tribunal of commerce, if the discharge be made in a French port.

In places where there is no tribunal of commerce, the referees are appointed by the justice of the peace.

If the vessel be discharged in a foreign port, they are appointed by the French consul, and where there is no French consul, by the magistrate of the place.

The referees are to be sworn before they enter upon their business.

Art. 415. The goods thrown overboard are appraised, according to the price current of the place of discharge; their quality is ascertained by the production of the bills of lading and invoices, if there be any.

Art. 416. The referees appointed in virtue of article 414. apportion the contribution for the losses and damages.

This contribution is rendered obligatory by the confirmation of the tribunal.

In foreign ports the contribution is rendered obligatory by the French consul, or where there is no French consul, by any competent tribunal in the place.

Art. 417. The contribution for the payment of the losses and damages, is made on the goods cast away, and on those saved, and on one half the value of the vessel and freight, in proportion to their value respectively, at the port of delivery.

Art. 418. If the quality of the goods has been misrepresented in the bill of lading, and they should be found of greater value, they contribute at the rate of their real valuation, if saved.

They are to be paid for according to the quality mentioned in the bill of lading, if lost.

Si les marchandises déclarées sont d'une qualité inférieure à celle qui est indiquée par le connaissement, elles contribuent d'après la qualité indiquée par le connaissement, si elles sont sauvées.

Elles sont payées sur le pied de leur valeur, si elles sont jetées ou endommagées.

Art. 419. Les munitions de guerre et de bouche, et les hardes des gens de l'équipage ne contribuent point au jet ; la valeur de celles qui auront été jetées sera payée par contribution sur tous les autres effets.

Art. 420. Les effets dont il n'y a pas de connaissement ou déclaration du capitaine, ne sont pas payés s'ils sont jetés ; ils contribuent s'ils sont sauvés.

Art. 421. Les effets chargés sur le tillac du navire contribuent s'ils sont sauvés.

S'ils sont jetés ou endommagés par le jet, le propriétaire n'est point admis à former une demande en contribution ; il ne peut exercer son recours que contre le capitaine.

Art. 422. Il n'y a lieu à contribution pour raison du dommage arrivé au navire, que dans le cas où le dommage a été fait pour faciliter le jet.

Art. 423. Si le jet ne sauve le navire, il n'y a lieu à aucune contribution.

Les marchandises sauvées ne sont point tenues du paiement ni du dédommagement de celles qui ont été jetées ou endommagées.

Art. 424. Si le jet sauve le navire, et si le navire, en continuant sa route, vient à se perdre,

Les effets sauvés contribuent au jet sur le pied de leur valeur en l'état où ils se trouvent, déduction faite des frais de sauvetage.

Art. 425. Les effets jetés ne contribuent en aucun cas au paiement des dommages arrivés depuis le jet aux marchandises sauvées.

Les marchandises ne contribuent point au paiement du navire perdu ou réduit à l'état d'innavigabilité.

If the goods in question be of an inferior quality to that which is indicated by the bill of lading, they contribute according to the quality therein mentioned, if saved.

They are to be paid for according to their real value, if thrown overboard or damaged.

Art. 419. Ammunitions and provisions, and the clothes of the ship's company do not contribute to the loss by jettison; the value of those thrown overboard shall be paid for by contribution on all the other property.

Art. 420. The goods for which there is no bill of lading or declaration of the captain, are not to be paid for, if thrown overboard; they shall contribute if saved.

Art. 421. The effects laden on the deck of the vessel contribute, if saved.

If they be thrown overboard or damaged by the jettison, the owner is not admitted to make a demand of contribution; his only remedy is against the master.

Art. 422. There is no ground for contribution on account of damage suffered by the vessel, except where the damage has been done to facilitate the jettison.

Art. 423. If the jettison do not save the vessel, there is no ground for any contribution.

The goods saved, in that case, are not bound for the payment or indemnity of those which have been thrown overboard or damaged.

Art. 424. If the jettison save the vessel, and if continuing her voyage she should be afterwards lost,

The goods saved contribute to the loss by jettison, according to their value in the condition in which they are found, deducting expense of salvage.

Art. 425. The effects thrown overboard, in no case contribute to the payment of the damages happened since the jettison to the goods saved.

The goods do not contribute to the payment of the vessel lost or rendered unable to navigate.

Art. 426 Si, en vertu d'une délibération, le navire a été ouvert pour en extraire les marchandises, elles contribuent à la réparation du dommage causé au navire.

Art. 427. En cas de perte des marchandises mises dans des barques, pour alléger le navire entrant dans un port ou une rivière, la répartition en est faite sur le navire et son chargement en entier.

Si le navire périt avec le reste de son chargement, il n'est fait aucune répartition sur les marchandises mises dans les allèges, quoiqu'elles arrivent à bon port.

Art. 428. Dans tous les cas ci-dessus exprimés, le capitaine et l'équipage sont privilégiés, sur les marchandises ou le prix en provenant, pour le montant de la contribution.

Art. 429. Si, depuis la répartition, les effets jetés sont recouvrés par les propriétaires, ils sont tenus de rapporter au capitaine et aux intéressés ce qu'ils ont reçu dans la contribution, déduction faite des dommages causés par le jet et des frais de recouvrement.

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## TITRE XIII.

### *Des Prescriptions.*

Art. 430. Le capitaine ne peut acquérir la propriété du navire par voie de prescription.

Art. 431. L'action en délaissement est prescrite dans les délais exprimés par l'article 373.

Art. 432. Toute action dérivant d'un contrat à la grosse, ou d'une police d'assurance, est prescrite après cinq ans, à compter de la date du contrat.

Art. 433. Sont prescrites,

Toute action en paiement pour fret de navire, gages et loyers des officiers, matelots et autres gens de l'équipage, un an après le voyage fini.

Art. 426. If, in consequence of a consultation, the hatches have been opened to take out the goods, they contribute to the damage caused to the vessel.

Art. 427. In case of the loss of goods put into lighters, in order to lighten the ship in entering a port or a river, the contribution for the loss is made on the vessel and her whole cargo.

If the vessel perish with the rest of her cargo, the goods put into lighters do not contribute, although they reach the port in safety.

Art. 428. In all the cases above mentioned, the master and mariners have a lien on the goods, or their proceeds, for the amount of the contribution.

Art. 429. If, after the contribution has been made, the effects thrown overboard be recovered by the owners, they are bound to refund to the master and others interested, what they have received in the contribution, deducting damages occasioned by the jettison, and the expenses of salvage.

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## TITLE XIII.

### *Of Prescription and Limitation of Actions.*

Art. 430. The master cannot acquire the property of the vessel by means of prescription.

Art. 431. Actions on abandonment are limited to the periods expressed in article 373.(49)

Art. 432. All actions arising on contracts of bottomry, respondentia, or policies of insurance, are limited to five years from the date of the contract.

Art. 433. All actions for the payment of the freight, the wages and pay of the officers, seamen, and others, of the ship's company, are limited to a year after the voyage is ended.

Pour nourriture fournie aux matelots par l'ordre du capitaine, un an après la livraison.

Pour fournitures de bois et autres choses nécessaires aux constructions, équipement et avituaillement du navire, un an après ces fournitures faites.

Pour salaires d'ouvriers et pour ouvrages faits, un an après la réception des ouvrages.

Toute demande en délivrance de marchandises, un an après l'arrivée du navire.

Art. 434. La prescription ne peut avoir lieu, s'il y a cédale, obligation, arrêté de compte, ou interpellation judiciaire.

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#### TITRE XIV.

##### *Fins de non-recevoir.*

Art. 435. Sont non recevables :

Toutes actions contre le capitaine et les assureurs, pour dommage arrivé à la marchandise, si elle a été reçue sans protestation.

Toutes actions contre l'affrèteur, pour avarie, si le capitaine a livré les marchandises et reçu son fret sans avoir protesté.

Toutes actions en indemnité pour dommages causés par l'abordage dans un lieu où le capitaine a pu agir, s'il n'a point fait de réclamation.

Art. 436. Ces protestations et réclamations sont nulles, si elles ne sont faites et signifiées dans les vingt-quatre heures, et si dans le mois de leur date, elles ne sont suivies d'une demande en justice.

For victuals furnished to the seamen by order of the captain, to a year after the delivery.

For supplies of timber and other things necessary for the construction, equipment, and victualling of the vessel, to a year after the delivery.

For wages of workmen, and work done, to a year after the completion of the work.

All demands for the delivery of goods on board of a vessel, to a year after the arrival of the vessel.

Art. 434. The limitation cannot take effect, if there be a written acknowledgment, obligation, account settled, or judicial citation.

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#### TITLE XIV.

##### *Of Exceptions or bars to actions.*(50)

Art. 435. Absolute exceptions to a right of action are admitted in the following cases:

To all actions against the master and insurer for any damage which may have happened to the goods, if they have been received without protestation.

To all actions against the freighter for average loss, if the master has delivered the goods and received his freight, without having made a protest.

To all actions for indemnity of damage caused by running foul, in a place where the captain might have had his legal remedy, and has made no claim.

Art. 436. These protestations and claims are void, if they be not made and notified to the opposite party within twenty-four hours, and if, within a month from their date, they be not followed by a judicial demand.

## **LIVRE III.**

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### **DES FAILLITES ET DES BANQUEROUTES.**

#### *Dispositions Générales.*

Art. 437. Tout commerçant qui cesse ses paiements est en état de faillite.

Art. 438. Tout commerçant failli qui se trouve dans l'un des cas de faute grave, ou de fraude prévus par la présente loi, est en état de banqueroute.

Art. 439. Il y a deux espèces de banqueroutes :

La banqueroute simple ; elle sera jugée par les tribunaux correctionnels.

La banqueroute frauduleuse ; elle sera jugée par les cours de justice criminelle.

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### **TITRE PREMIER.**

#### **DE LA FAILLITE.**

#### **CHAPITRE PREMIER.**

##### *De l'Ouverture de la Faillite.*

Art. 440. Tout failli sera tenu, dans les trois jours de la cessation de paiements, d'en faire la déclaration au greffe du tribunal de commerce ; le jour où il aura cessé ses paiements sera compris dans ces trois jours.



## BOOK III.

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### OF FAILURES AND BANKRUPTCIES.

#### *General Provisions.*

Art. 437. EVERY merchant, or trader, who stops payment, is in a state of failure.

Art. 438. Every merchant, or trader, having failed, and being found guilty of any of the acts of gross misconduct, or of fraud, recognised in the present law, is in a state of bankruptcy.

Art. 439. There are two species of bankruptcy, to wit:

Simple bankruptcy, which shall be tried by the correctional tribunals.

Fraudulent bankruptcy, which shall be tried by the courts of criminal judicature.

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#### TITLE I.

#### OF FAILURE.

#### CHAPTER I.

##### *Of the Commencement of the Failure.*

Art. 440. Every insolvent is required, within three <sup>3</sup>days from his stoppage of payment, to make a declaration of the same at the clerk's office of the tribunal of commerce; the day on which he has stopped payment is included in the three days.

En cas de faillite d'une société en nom collectif, la déclaration du failli contiendra le nom et l'indication du domicile de chacun des associés solidaires.

Art. 441. L'ouverture de la faillite est déclarée par le tribunal de commerce : son époque est fixée, soit par la retraite du débiteur, soit par la clôture de ses magasins, soit par la date de tous actes constatant le refus d'acquitter ou de payer des engagements de commerce.

Tous les actes ci-dessus mentionnés ne constateront néanmoins l'ouverture de la faillite, que lorsqu'il y aura cessation de paiement ou déclaration du failli.

Art. 442. Le failli, à compter du jour de la faillite, est dessaisi, de plein droit, de l'administration de tous ses biens.

Art. 443. Nul ne peut acquérir privilège ni hypothèque sur les biens du failli, dans les dix jours qui précèdent l'ouverture de la faillite.

Art. 444. Tous actes translatifs de propriété immobilière, faits par le failli, à titre gratuit, dans les dix jours qui précèdent l'ouverture de la faillite, sont nuls et sans effet relativement à la masse des créanciers ; tous actes du même genre, à titre onéreux, sont susceptibles d'être annulés, sur la demande des créanciers, s'ils paraissent aux juges porter des caractères de fraude.

Art. 445. Tous actes ou engagements pour fait de commerce, contractés par le débiteur dans les dix jours qui précèdent l'ouverture de la faillite, sont présumés frauduleux, quant au failli : ils sont nuls, lorsqu'il est prouvé qu'il y a fraude de la part des autres contractants.

Art. 446. Toutes sommes payées, dans les dix jours qui précèdent l'ouverture de la faillite, pour dettes commerciales non échues, sont rapportées.

Art. 447. Tous actes ou paiements faits en fraude des créanciers, sont nuls.

Art. 448. L'ouverture de la faillite rend exigibles les dettes

In case of failure of a partnership under a collective firm, the declaration of the insolvent shall contain the name and place of residence of each of the partners jointly and severally responsible.

Art. 441. The commencement of the failure is declared by the tribunal of commerce: its epoch is determined either by the departure of the debtor, or by the closure of his shop, or warehouse, or by the date of acts, or instruments, proving his refusal to acquit or pay his commercial engagements.

The acts or instruments above mentioned shall not, however, be proof of the commencement of the failure, except where there has been an actual stoppage of payment, or the declaration of the insolvent.

Art. 442. The insolvent, from the day of his failure, is divested of all right in the administration of his property.

Art. 443. No person can acquire a lien, or mortgage, on the property of the insolvent, within the ten days next preceding the commencement of the failure.

Art. 444. All acts or instruments executed by the insolvent, conveying or assigning real property, as a gift, or free grant, within the ten days next preceding the commencement of the failure, are void and without effect, in regard to the creditors; all deeds of the same kind, with a valuable consideration, may be declared void on the application of the creditors, if they appear to the judge to bear the marks of fraud.

Art. 445. All acts or engagements founded on commercial transactions, contracted by the debtor within the ten days next preceding the commencement of the failure, are presumed to be fraudulent, with respect to the insolvent; they are void where fraud, on the part of the other contracting parties, is proved.

Art. 446. All sums of money paid, within the ten days next preceding the commencement of the failure, for commercial debts not due, are to be refunded.

Art. 447. All acts done, or payments made, to defraud creditors, are void.

Art. 448. The commencement of the failure renders all debts

passives non échues; à l'égard des effets de commerce par lesquels le failli se trouvera être l'un des obligés, les autres obligés ne seront tenus que de donner caution pour le paiement, à l'échéance, s'ils n'aiment mieux payer immédiatement.

## CHAPITRE II.

### *De l'Apposition des Scellés.*

Art. 449. Dès que le tribunal de commerce aura connaissance de la faillite, soit par la déclaration du failli, soit par la requête de quelque créancier, soit par la notoriété publique, il ordonnera l'apposition des scellés: expédition du jugement sera sur-le-champ adressée au juge de paix.

Art. 450. Le juge de paix pourra aussi apposer les scellés, sur la notoriété acquise.

Art. 451. Les scellés seront apposés sur les magasins, comptoirs, caisses, porte-feuilles, livres, registres, papiers, meubles et effets du failli.

Art. 452. Si la faillite est faite par des associés réunis en société collective, les scellés seront apposés, non seulement dans le principal manoir de la société, mais dans le domicile séparé de chacun des associés solidaires.

Art. 453. Dans tous les cas, le juge de paix adressera, sans délai, au tribunal de commerce, le procès-verbal de l'apposition des scellés.

owing by the insolvent demandable, though not yet due; and with regard to commercial engagements, in which other persons are jointly bound with the insolvent, they shall be required only to give security for the payment, when due, unless they prefer paying immediately.

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CHAPTER II.

*Of Affixing the Seals.*

Art. 449. As soon as the tribunal of commerce shall have cognizance of a failure, whether by the declaration of the insolvent, the petition of some creditor, or public notoriety, it shall make an order directing the seals to be affixed; of which order an exemplification shall immediately be sent to the justice of the peace.

Art. 450. The justice of the peace may also affix the seals, on being satisfied of the failure from public notoriety.

Art. 451. The seals shall be affixed on the warehouses, counting-rooms, coffers, desks, books, registers, papers, personal property, and effects of the insolvent.

Art. 452. If the failure of a partnership under a collective firm take place, the seals shall be affixed, not only in the principal mansion of the partnership, but also in the separate dwelling of each of the partners jointly and severally responsible.

Art. 453. In all cases, the justice of the peace shall transmit, without delay, to the tribunal of commerce, a report of the affixion of the seals.

## **Ch. Titre I.**

### **Art. 1. Des Agents de la**

ordonnera l'apposition  
à l'époque de l'ou-  
s membres commissaire  
suivant l'importance de  
ce du commissaire, les  
présente loi.

apposés par le juge de  
se conformera au sur-  
dès qu'il aura connais-

donnera, en même temps,  
la maison d'arrêt pour  
officier de police ou de

contre le failli d'écrou ou  
du tribunal de com-

tribunal pourront être  
en tous autres, qui offri-  
de leur gestion. Nul  
dans le cours de la même

inséré par extrait dans  
l'art. 682. du code de

CHAPTER III.

*Of the Appointment of the Judge-Commissioner, and the Agents  
for the Failure.*

Art. 454. By the same order which shall direct the affixion of the seals, the tribunal of commerce shall declare the time of the commencement of the failure; it shall appoint one of its members commissioner of the failure, and one or more agents, according to the importance of the case, to perform, under the superintendence of the commissioner, the duties enjoined on them by the present law.

In case the seals shall have been affixed by the justice of the peace, on the notoriety of the failure, the tribunal shall, moreover, observe the regulations above prescribed, as soon as it shall have cognizance of the failure.

Art. 455. The tribunal of commerce shall, at the same time, order either the confinement of the insolvent in the debtors' prison, or the custody of his person by an officer of police or of justice, or by a military guard.

In this situation no warrant can be received for the further detention of the insolvent, in virtue of any judgment of the tribunal of commerce.

Art. 456. The agents who shall be appointed by the tribunal, may be chosen from among the presumptive creditors, or any others, who should afford the greatest security for the faithful discharge of their duty. No person can be named agent twice in the course of the same year, unless a creditor.

Art. 457. The judgment of failure shall be posted up, and an abstract of the same inserted in the newspapers, according to the mode established by article 683. of the code of civil procedure.

Il sera exécutoire provisoirement, mais susceptible d'opposition; savoir: pour le failli, dans les huit jours qui suivront celui de l'affiche; pour les créanciers présents ou représentés, et pour tout autre intéressé, jusques et y compris le jour du procès-verbal constatant la vérification des créances; pour les créanciers en demeure, jusqu'à l'expiration du dernier délai qui leur aura été accordé.

Art. 458. Le juge-commissaire fera au tribunal de commerce le rapport de toutes les contestations que la faillite pourra faire naître, et qui seront de la compétence de ce tribunal.

Il sera chargé spécialement d'accélérer la confection du bilan, la convocation des créanciers, et de surveiller la gestion de la faillite, soit pendant la durée de la gestion provisoire des agents, soit pendant celle de l'administration des syndics provisoires ou définitifs.

Art. 459. Les agents nommés par le tribunal de commerce gèreront la faillite sous la surveillance du commissaire, jusqu'à la nomination des syndics: leur gestion provisoire ne pourra durer que quinze jours au plus, à moins que le tribunal ne trouve nécessaire de prolonger cette agence de quinze autres jours pour tout délai.

Art. 460. Les agents seront révocables par le tribunal qui les aura nommés.

Art. 461. Les agents ne pourront faire aucune fonction, avant d'avoir prêté serment, devant le commissaire, de bien et fidèlement s'acquitter des fonctions qui leur seront attribuées.



It shall be provisionally executory, but open to opposition; to wit: for the insolvent, within eight days after the publication; for the creditors present, or represented, and for every other person interested, until and including the day of the report stating the verification of the debts; for the creditors who have not appeared, until the expiration of the last term granted to them.

Art. 458. The judge-commissioner shall make a report to the tribunal of commerce of all the controversies, to which the failure may give rise, and which are within the jurisdiction of that tribunal.

He shall be specially charged to hasten the completion of the balance-book, to call a meeting of the creditors, and to superintend the business of the failure, whether during the provisional management of the agents, or during the administration of the provisional or definitive assignees.

Art. 459. The agents appointed by the tribunal of commerce shall attend to the business of the failure, under the superintendence of the commissioner, until the appointment of the assignees: their provisional management cannot continue for a longer time than fifteen days at most, unless the tribunal find it necessary to prolong their agency to fifteen days further, at the utmost delay.

Art. 460. The agents shall be removable by the tribunal which appointed them.

Art. 461. The agents cannot enter upon their functions before they have made oath, before the commissioner, well and faithfully to perform the duties of their office.

**CHAPITRE IV.***Des Fonctions préalables des Agents, et des premières Dispositions à l'égard du Failli.*

Art. 462. Si, après la nomination des agents et la prestation du serment, les scellés n'avaient point été apposés, les agents requerront le juge de paix de procéder à l'apposition.

Art. 463. Les livres du failli seront extraits des scellés, et remis par le juge de paix aux agents, après avoir été arrêtés par lui: il constatera sommairement, par son procès-verbal, l'état dans lequel ils se trouveront.

Les effets du porte-feuille qui seront à courte échéance ou susceptibles d'acceptation, seront aussi extraits des scellés par le juge de paix, décrits et remis aux agents pour en faire le recouvrement: le bordereau en sera remis au commissaire.

Les agents recevront les autres sommes dues au failli, et sur leurs quittances, qui devront être visées par le commissaire. Les lettres adressées au failli seront remises aux agents; ils les ouvriront, s'il est absent; s'il est présent, il assistera à leur ouverture.

Art. 464. Les agents feront retirer et vendre les denrées et marchandises sujettes à dépérissement prochain, après avoir exposé leurs motifs au commissaire et obtenu son autorisation.

Les marchandises non dépérissables ne pourront être vendues par les agents qu'après la permission du tribunal de commerce, et sur le rapport du commissaire.

Art. 465. Toutes les sommes reçues par les agents seront versées dans une caisse à deux clefs, dont il sera fait mention à l'art. 466.

Art. 466. Après l'apposition des scellés, le commissaire rendra

## CHAPTER IV.

### *Of the Preliminary duties of the Agents, and of the first Provisions in regard to the Insolvent.*

**Art. 462.** If, after the appointment of the agents, and their qualification under oath, the seals have not been affixed, the agents shall require the justice of the peace to proceed to the affixion of the seals.

**Art. 463.** The books of the insolvent shall be taken from under the seals, and delivered by the justice of the peace to the agents, after having been inspected and certified by him: he shall mention summarily in his report, the state in which they are found.

The bills and securities in the port folio, which have a short time to run, or which require acceptance, shall also be extracted from the seals by the justice of the peace, described and delivered to the agents for collection; the memorandum book shall be delivered to the commissioner.

The agents shall collect the other sums due to the insolvent, and give acquittances, which must be attested by the commissioner. The letters addressed to the insolvent shall be delivered to the agents; they shall open them, if he be absent; if present, he may assist in the opening.

**Art. 464.** The agents shall make sale of the produce and merchandise of a perishable nature, after having stated their motives to the commissioner, and obtained his athorization.

Merchandise not of a perishable nature, cannot be sold by the agents, except under the permission of the tribunal of commerce, given on the report of the commissioner.

**Art. 465.** All moneys received by the agents, shall be deposited in a chest with two keys, of which mention will be made in article 496.

**Art. 466.** After the affixion of the seals, the commissioner

compte au tribunal de l'état apparent des affaires du failli, et pourra proposer ou sa mise en liberté pure et simple, avec sauf-conduit provisoire de sa personne, ou sa mise en liberté avec sauf-conduit, en fournissant caution de se représenter, sous peine de paiement d'une somme que le tribunal arbitrera, et qui tournera, le cas advenant, au profit des créanciers.

Art. 467. A défaut par le commissaire de proposer un sauf-conduit pour le failli, ce dernier pourra présenter sa demande au tribunal de commerce, qui statuera après avoir entendu le commissaire.

Art. 468. Si le failli a obtenu un sauf-conduit, les agents l'appelleront auprès d'eux, pour clore et arrêter les livres en sa présence.

Si le failli ne se rend pas à l'invitation, il sera sommé de comparaître.

Si le failli ne comparait pas quarante-huit heures après la sommation, il sera réputé s'être absenté à dessein.

Le failli pourra néanmoins comparaître par fondé de pouvoir, s'il propose des empêchements jugés valables par le commissaire.

Art. 469. Le failli qui n'aura pas obtenu de sauf-conduit, comparaitra par un fondé de pouvoir; à défaut de quoi il sera réputé s'être absenté à dessein.

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## CHAPITRE V.

### *Du Bilan.*

Art. 470. Le failli qui aura, avant la déclaration de sa faillite, préparé son bilan, ou état passif et actif de ses affaires, et qui

shall render an account to the tribunal of commerce of the apparent state of the insolvent's affairs, and may propose, either his unconditional liberation, with a provisional safeconduct for his person, or his liberation, with safeconduct, on giving security for his appearance, under the penalty of a sum which the tribunal shall award, and which, in case of forfeiture, shall enure to the benefit of the creditors.

Art. 467. In default of the commissioner to propose a safeconduct for the insolvent, the latter may present his demand for the same to the tribunal of commerce, which shall make an order in the case, after hearing the commissioner.

Art. 468. If the insolvent has obtained a safeconduct, the agents shall request his attendance, in order to settle and adjust the books in his presence.

If the insolvent do not come by their invitation, he shall be summoned to appear.

If the insolvent do not appear, within forty-eight hours after the citation, he shall be presumed to have absented himself designedly.

The insolvent may, nevertheless, appear by attorney, if he allege reasons deemed valid by the commissioner for not appearing in person.

Art. 469. The insolvent who has not obtained a safeconduct, must appear by attorney; in default of which, he shall be reputed to have absented himself designedly.

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## CHAPTER V.

### *Of the Balance-Book.*

Art. 470. The insolvent who shall have, before the declaration of his failure, arranged his balance-book, or statement of his

l'aura gardé par-devers lui, le remettra aux agents dans les vingt-quatre heures de leur entrée en fonctions.

**Art. 471.** Le bilan devra contenir l'énumération et l'évaluation de tous les effets mobiliers et immobiliers du débiteur, l'état des dettes actives et passives, le tableau des profits et des pertes, le tableau des dépenses ; le bilan devra être certifié véritable, daté et signé par le débiteur.

**Art. 472.** Si, à l'époque de l'entrée en fonction des agents, le failli n'avait pas préparé le bilan, il sera tenu, par lui ou par son fondé de pouvoir, suivant les cas prévus par les articles 468. et 469. de procéder à la rédaction du bilan, en présence des agents ou de la personne qu'ils auront préposée.

Les livres et papiers du failli lui seront, à cet effet, communiqués sans déplacement.

**Art. 473.** Dans tous les cas où le bilan n'aurait pas été rédigé, soit par le failli, soit par un fondé de pouvoir, les agents procéderont eux-mêmes à la formation du bilan, au moyen des livres et papiers du failli, et au moyen des informations et renseignements qu'ils pourront se procurer auprès de la femme du failli, de ses enfants, de ses commis et autres employés.

**Art. 474.** Le juge-commissaire pourra aussi, soit d'office, soit sur la demande d'un ou de plusieurs créanciers, ou même de l'agent, interroger les individus désignés dans l'article précédent, à l'exception de la femme et des enfants du failli, tant sur ce qui concerne la formation du bilan, que sur les causes et les circonstances de sa faillite.

**Art. 475.** Si le failli vient à décéder après l'ouverture de sa faillite, sa veuve ou ses enfants pourront se présenter pour suppléer leur auteur dans la formation du bilan, et pour toutes les autres obligations imposées au failli par la présente loi ; à leur défaut les agents procéderont.

debts and credits, and kept it by him, shall deliver it to the agents, within twenty-four hours after their entrance on the duties of their office.

Art. 471. The balance-book must contain the enumeration and valuation of all the property, real and personal, of the debtor the state of his debts and credits, a statement of his profits and losses, and of his expenses; it must be certified, dated, and signed by the debtor.

Art. 472. If, at the period when the agents enter on their functions, the insolvent has not adjusted his balance-book, he shall be required, or his attorney legally authorized in the cases provided for by articles 468. and 469. to proceed to the adjustment of the balance-book, in the presence of the agents, or of the person whom they shall have deputed.

The books and papers of the insolvent shall be laid before him, for this purpose, without displacing them.

Art. 473. In all cases where the balance-book should not have been arranged, either by the insolvent, or by his lawful attorney, the agents shall themselves proceed to the adjustment of the same, by means of the books and papers of the insolvent, and the knowledge and information which they may procure from his wife, children, clerks or others, in his service.

Art. 474. The judge-commissioner may also, either *ex officio*, or on the demand of one or more creditors, or even of the agent, interrogate the individuals designated in the preceding article, with the exception of the wife and the children of the insolvent, as well in regard to what concerns the formation of the balance-book, as the causes and circumstances of the failure.

Art. 475. If the insolvent should die after the publication of his failure, his widow or his children may present themselves to supply his place, in the adjustment of the balance-book, and for all other duties imposed on the insolvent by the present law; in their default, the agents shall proceed in the business.

## CHAPITRE VI.

## DES SYNDICS PROVISOIRES.

## SECTION PREMIERE.

*De la nomination des Syndics provisoires.*

Art. 476. Dès que le bilan aura été remis par les agents au commissaire, celui-ci dressera, dans trois jours, pour tout délai, la liste des créanciers, qui sera remise au tribunal de commerce, et il les fera convoquer par lettres, affiches, et insertion dans les journaux.

Art. 477. Même avant la confection du bilan, le commissaire délégué pourra convoquer les créanciers, suivant l'exigence des cas.

Art. 478. Les créanciers susdits se réuniront, en présence du commissaire, aux jour et lieu indiqués par lui.

Art. 479. Toute personne qui se présenterait comme créancier à cette assemblée, et dont le titre serait postérieurement reconnu supposé de concert entre elle et le failli, encourra les peines portées contre les complices de banqueroutiers frauduleux.

Art. 480. Les créanciers réunis présenteront au juge-commissaire une liste triple du nombre des syndics provisoires qu'ils estimeront devoir être nommés ; sur cette liste, le tribunal de commerce nommera.



**CHAPTER VI.**

**OF THE PROVISIONAL ASSIGNEES.(51)**

**SECTION I.**

*Of the appointment of the provisional Assignees.*

Art. 476. As soon as the balance-book shall have been delivered by the agents to the commissioner, the latter shall draw up, within three days, at the utmost delay, a list of the creditors, which shall be delivered to the tribunal of commerce, and he shall cause them to be convened by letters, notices posted up, and inserted in the newspapers.

Art. 477. Even before the completion of the balance-book, the commissioner may convene the creditors, according to the exigence of the case.

Art. 478. The creditors above mentioned shall assemble, in the presence of the commissioner, on the day, and at the place, designated by him.

Art. 479. Any person appearing as a creditor at the meeting, and whose title should be subsequently discovered to be collusive, between him and the insolvent, shall incur the penalty ordained against accomplices in a fraudulent bankruptcy.

Art. 480. The creditors assembled shall present to the judge-commissioner, a triple list of the number of provisional assignees, whom they deem fit to be appointed; from this list the tribunal of commerce shall make the appointment.

## SECTION II.

### *De la Cessation des fonctions des Agents.*

Art. 481. Dans les vingt-quatre heures qui suivront la nomination des syndics provisoires, les agents cesseront leurs fonctions, et rendront compte aux syndics, en présence du commissaire, de toutes leurs opérations et de l'état de la faillite.

Art. 482. Après ce compte rendu, les syndics continueront les opérations commencées par les agents, et seront chargés provisoirement de toute l'administration de la faillite, sous la surveillance du juge-commissaire.

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## SECTION III.

### *Des Indemnités pour les Agents.*

Art. 483. Les agents, après la reddition de leur compte, auront droit à une indemnité qui leur sera payée par les syndics provisoires.

Art. 484. Cette indemnité sera réglée selon les lieux et suivant la nature de la faillite, d'après les bases qui seront établies par un règlement d'administration publique.

Art. 485. Si les agents ont été pris parmi les créanciers, ils ne recevront aucune indemnité.

## SECTION II.

### *Of the Termination of the Agents' Functions.*

Art. 481. Within twenty-four hours after the appointment of the provisional assignees, the functions of the agents shall cease, and they shall render an account to the assignees, in the presence of the commissioner, of all their operations, and the situation of the insolvent's estate.

Art. 482. This account being rendered, the assignees shall continue the operations begun by the agents, and shall be provisionally charged with the whole management of the insolvent's estate, under the superintendence of the judge-commissioner.



## SECTION III.

### *Of the Compensation to the Agents.*

Art. 483. The agents, after the delivery of their account, shall be entitled to a compensation, which shall be paid to them by the provisional assignees.

Art. 484. This compensation shall be regulated according to the nature and circumstances of the failure, on a basis which shall be established by a regulation of public administration.

Art. 485. If the agents have been chosen from among the creditors, they shall receive no compensation.

## CHAPITRE VII.

### DES OPERATIONS DES SYNDICS PROVISOIRES.

#### SECTION PREMIERE.

##### *De la Levée des Scellés, et de l'Inventaire.*

Art. 486. Aussitôt après leur nomination, les syndics provisoires requerront la levée des scellés, et procéderont à l'inventaire des biens du failli. Ils seront libres de se faire aider, pour l'estimation, par qui ils jugeront convenable; conformément à l'article 937. du code de procédure civile, cet inventaire se fera par les syndics à mesure que les scellés seront levés, et le juge de paix y assistera et le signera à chaque vacation.

Art. 487. Le failli sera présent ou dûment appelé à la levée des scellés et aux opérations de l'inventaire.

Art. 488. En toute faillite, les agents, syndics provisoires et définitifs, seront tenus de remettre, dans la huitaine de leur entrée en fonctions, au magistrat de sûreté de l'arrondissement, un mémoire ou compte sommaire de l'état apparent de la faillite, de ses principales causes et circonstances, et des caractères qu'elle paraît avoir.

Art. 489. Le magistrat de sûreté pourra, s'il le juge convenable, se transporter au domicile du failli ou des faillis, assister à la rédaction du bilan, de l'inventaire et des autres actes de la faillite, se faire donner tous les renseignements qui en résulteront, et faire en conséquence les actes ou poursuites nécessaires; le tout d'office et sans frais.

## CHAPTER VII.

## OF THE OPERATIONS OF THE PROVISIONAL ASSIGNEES.

## SECTION I.

*Of the Removal of the Seals, and the Inventory.*

Art. 486. As soon as their appointment takes place, the provisional assignees shall demand the removal of the seals, and proceed to making an inventory of the insolvent's estate. They shall be at liberty to call to their aid, in making the appraisement, such persons as they may deem suitable, conformably to article 937. of the code of civil procedure. Every article shall be inventoried successively as the seals are removed, and the justice of the peace shall be present, and sign it at each adjournment.

Art. 487. The insolvent shall be present, or duly requested to attend at the removal of the seals, and the making of the inventory.

Art. 488. In every case of failure, the agents, the provisional, and the definitive assignees, shall be required to deliver to the magistrate of safety of the district, within eight days after their entrance into office, a report, or summary statement of the apparent condition of the failure, of its principal causes and circumstances, and the character it appears to bear.

Art. 489. The magistrate of public safety may, if he judge proper, repair to the domicile of the insolvent, assist in the adjustment of the balance-book, in making the inventory, and in other acts concerning the failure, require the circumstances of the same to be communicated to him, and in consequence of which adopt such measures, or institute such prosecutions, as may be necessary; the whole *ex officio* and free of expense.

Art. 490. S'il présume qu'il y a banqueroute simple ou frauduleuse; s'il y a mandat d'amener, de dépôt ou d'arrêt décerné contre le failli, il en donnera connaissance, sans délai, au juge-commissaire du tribunal de commerce; en ce cas, ce commissaire ne pourra proposer, ni le tribunal accorder de sauf-conduit au failli.

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## SECTION II.

### *De la Vente des Marchandises et Meubles, et des Recouvrements.*

Art. 491. L'inventaire terminé, les marchandises, l'argent, les titres actifs, meubles et effets du débiteur, seront remis aux syndics qui s'en chargeront au pied dudit inventaire.

Art. 492. Les syndics pourront, sous l'autorisation du commissaire, procéder au recouvrement des dettes actives du failli.

Ils pourront aussi procéder à la vente de ses effets et marchandises, soit par la voie des enchères publiques, par l'entremise des courtiers, et à la bourse, soit à l'amiable, à leur choix.

Art. 493. Si le failli a obtenu un sauf-conduit, les syndics pourront l'employer pour faciliter et éclairer leur gestion; ils fixeront les conditions de son travail.

Art. 494. A compter de l'entrée en fonctions des agents et ensuite des syndics, toute action civile intentée, avant la faillite, contre la personne et les biens mobiliers du failli, par un créancier privé, ne pourra être suivie que contre les agents et les syndics; et toute action qui serait intentée après la faillite, ne pourra l'être que contre les agents et les syndics.

Art. 490. If the case appear to him to be that of a bankruptcy, either simple or fraudulent, or if a warrant has issued for the arrest or confinement of the insolvent, he shall immediately give information of the same to the judge-commissioner of the tribunal of commerce; in which case the commissioner cannot propose, nor the tribunal grant, a certificate of safeconduct to the insolvent.

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## SECTION II.

### *Of the Sale of the Goods and Moveables, and of the Collection of the Debts.*

Art. 491. The inventory being finished, the goods, the money, the bills and securities, the furniture and effects of the debtor, shall be delivered to the assignees, who shall take charge of the same, and be responsible for the articles therein mentioned.

Art. 492. The assignees may, under the authorization of the commissioner, proceed to the collection of the debts due to the insolvent.

They may also proceed to the sale of his effects and merchandise, either by public auction, or through the agency of brokers, on the exchange, or at private sale, according to their judgment.

Art. 493. If the insolvent has obtained a protection, the assignees may employ him to facilitate and aid their operations; they shall fix the compensation for his services.

Art. 494. From the entrance into office of the agents, and afterwards of the assignees, no civil suit brought before the failure, against the person, or personal property of the insolvent, by an individual creditor, can be continued, except against the agents and assignees; and all actions which may be instituted after the failure can only be prosecuted against the agents and assignees.

Art. 495. Si les créanciers ont quelque motif de se plaindre des opérations des syndics, ils en référeront au commissaire, qui statuera, s'il y a lieu, ou fera son rapport au tribunal de commerce.

Art. 496. Les deniers provenant des ventes et des recouvrements seront versés, sous la déduction des dépenses et frais, dans une caisse à double serrure. Une des clefs sera remise au plus âgé des agents ou syndics, et l'autre à celui d'entre les créanciers que le commissaire aura préposé à cet effet.

Art. 497. Toutes les semaines, le bordereau de situation de la caisse de la faillite sera remis au commissaire, qui pourra, sur la demande des syndics, et à raison des circonstances, ordonner le versement de tout ou partie des fonds à la caisse d'amortissement, ou entre les mains du délégué de cette caisse dans les départements, à la charge de faire courir, au profit de la masse, les intérêts accordés aux sommes consignées à cette même caisse.

Art. 498. Le retirement des fonds versés à la caisse d'amortissement se fera en vertu d'une ordonnance du commissaire.

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### SECTION III.

#### *Des Actes conservatoires.*

Art. 499. A compter de leur entrée en fonctions, les agents, et ensuite les syndics, seront tenus de faire tous actes pour la conservation des droits du failli sur ses débiteurs.

Ils seront aussi tenus de requérir l'inscription aux hypothèques sur les immeubles des débiteurs du failli, si elle n'a été requise par ce dernier, et s'il a des titres hypothécaires. L'inscription



Art. 495. If the creditors have any cause to complain of the management of the assignees, they shall refer the matter to the commissioner, who shall make an order in the case, if there be cause, or report it to the tribunal of commerce.

Art. 496. The money arising from the sales and collections shall be deposited, after deducting the charges and expenses, in a chest with two locks. One of the keys of which shall be delivered to the senior agent, or assignee, and the other to one of the creditors, whom the commissioner shall nominate for that purpose.

Art. 497. Every week a statement of the funds in the chest, belonging to the insolvent's estate, shall be delivered to the commissioner, who may, on the request of the assignees, and under certain circumstances, order the deposit of the whole or a part of the same, in the bank of the sinking fund, or in the hands of the deputy treasurer of that bank in the departments, for the purpose of benefiting the creditors, by drawing the interest allowed on sums deposited in that bank.

Art. 498. The funds deposited in the bank of the sinking fund shall be drawn from the same in virtue of an order of the commissioner.

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### SECTION III.

#### *Of Conservatory Acts.*

Art. 499. The agents, and afterwards the assignees, shall be bound, from their entrance into office, to perform all necessary acts for the preservation of the rights of the insolvent against his debtors.

If there be any debts due to the insolvent, for which he has a lien by privilege, or mortgage on the real property of his debtors, and which have not been duly registered, the agents and

sera reçue au nom des agents et des syndics, qui joindront à leurs bordereaux un extrait des jugements qui les auront nommés.

Art. 500. Ils seront tenus de prendre inscription, au nom de la masse des créanciers, sur les immeubles du failli, dont ils connaîtront l'existence. L'inscription sera reçue sur un simple bordereau énonçant qu'il y a faillite, et relatant la date du jugement par lequel ils auront été nommés.

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#### SECTION IV.

##### *De la Vérification des Créances.*

Art. 501. La vérification des créances sera faite sans délai; le commissaire veillera à ce qu'il y soit procédé diligemment, à mesure que les créanciers se présenteront.

Art. 502. Tous les créanciers du failli seront avertis, à cet effet, par les papiers publics et par lettres des syndics, de se présenter, dans le délai de quarante jours, par eux ou par leurs fondés de pouvoirs, aux syndics de la faillite; de leur déclarer à quel titre et pour quelle somme ils sont créanciers, et de leur remettre leurs titres de créances, ou de les déposer au greffe du tribunal de commerce. Il leur en sera donné récépissé.

Art. 503. La vérification des créances sera faite contradictoirement entre le créancier ou son fondé de pouvoir et les syndics, et en présence du juge-commissaire, qui en dressera procès-verbal. Cette opération aura lieu dans les quinze jours qui suivront le délai fixé par l'article précédent.

Art. 504. Tout créancier dont la créance aura été vérifiée et

assignees shall be bound, from the day of their entrance into office, to cause the same to be recorded at the registry of hypothecation,(52) which shall be done in the name of the said agents and assignees, who shall join to their dockets an abstract of the order appointing them.

Art. 500. They shall be bound to cause to be recorded, at the registry aforesaid, in the name of the mass of creditors, their interest, in virtue of the failure, in the real estate of the insolvent, as far as it is known to the agents or assignees aforesaid. The record shall be made on filing a simple docket, mentioning the failure and the date of the order by which they were appointed.

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#### SECTION IV.

##### *Of Proving the Debts.*

Art. 501. Proof of the debts shall be made without delay; the commissioner shall see that it be done with diligence, regularly as the creditors present themselves.

Art. 502. All the creditors of the insolvent shall be notified for this purpose, in the newspapers, and by written notices sent from the assignees, requesting their attendance, within the space of forty days, in person, or by attorney, to declare the nature and amount of their respective demands, and to deliver the evidences of the same, or to deposite them in the clerk's office of the tribunal of commerce. A receipt for which shall be given to them.

Art. 503. The evidence of the debts shall be open to examination and objection, between the creditors or their attorneys and the assignees, in the presence of the commissioner, who shall make a report of the same. This operation shall take place within fifteen days after the expiration of the time fixed by the preceding article.

Art. 504. Every creditor whose demands shall have been ve-

affirmée, pourra assister à la vérification des autres créances, et fournir tout contredit aux vérifications faites ou à faire.

Art. 505. Le procès-verbal de vérification énoncera la représentation des titres de créance, le domicile des créanciers et de leurs fondés de pouvoirs.

Il contiendra la description sommaire des titres, lesquels seront rapprochés des registres du failli.

Il mentionnera les surcharges, ratures et entreliques.

Il exprimera que le porteur est légitime créancier de la somme par lui réclamée.

Le commissaire pourra, suivant l'exigence des cas, demander aux créanciers la représentation de leurs registres, ou l'extrait fait par les juges de commerce du lieu, en vertu d'un compulsoire; il pourra aussi, d'office, renvoyer devant le tribunal de commerce, qui statuera sur son rapport.

Art. 506. Si la créance n'est pas contestée, les syndics signeront, sur chacun des titres, la déclaration suivante :

*Admis au passif de la faillite de \*\*\*, pour la somme de \*\*\*, le \*\*\*.* Le visa du commissaire sera mis au bas de la déclaration.

Art. 507. Chaque créancier, dans le délai de huitaine, après que sa créance aura été vérifiée, sera tenu d'affirmer, entre les mains du commissaire, que ladite créance est sincère et véritable.

Art. 508. Si la créance est contestée en tout ou en partie, le juge-commissaire, sur la réquisition des syndics, pourra ordonner la représentation des titres du créancier, et le dépôt de ses titres au greffe du tribunal de commerce. Il pourra même, sans qu'il soit besoin de citation, renvoyer les parties, à bref délai, devant le tribunal de commerce qui jugera sur son rapport.

Art. 509. Le tribunal de commerce pourra ordonner qu'il soit fait, devant le commissaire, enquête sur les faits, et que les personnes qui pourront fournir des renseignements soient, à cet effet, citées pardevant lui.

rified and attested, may assist in the verification of the other demands against the estate of the insolvent, and offer proofs in contradiction to their legality.

Art. 505. The report of the verification shall state the exhibition of the evidences of the demands, the domicil of the creditors and of their attorneys.

It shall contain a summary description of the evidences compared with the books of the insolvent.

It shall mention the additions, erasures, and interlineations, found therein.

It shall declare that the bearer is a legitimate creditor for the sum demanded.

The commissioner may, according to the exigency of the case, require of the creditors the exhibition of their books, or the extract made by the commercial judges of the place, in virtue of a compulsory ordinance; he may also, *ex officio*, refer the matter to the tribunal of commerce, to make an order on his report.

Art. 506. If the debt be not disputed, the assignees shall sign on each of the titles of the same, the following declaration: *Admitted as a debt in the case of the failure of —, for the sum of —, the — day of —.* The attest of the commissioner shall be placed at the bottom of the declaration.

Art. 507. Every creditor shall be required, within the space of eight days, after his debt shall have been verified, to swear, before the commissioner, that his demand is just and true.

Art. 508. If the demand be contested wholly, or in part, the judge-commissioner at the request of the assignees, may order the evidences of the debt to be exhibited, and deposited in the clerk's office of the tribunal of commerce. He may, even without a citation, send the parties, on short notice, before the tribunal of commerce, where the case shall be decided on his report.

Art. 509. The tribunal of commerce may order an inquiry to be made before the commissioner into the facts, and summon persons who can give information on the subject, to appear before him.

**Art. 510.** A l'expiration des délais fixés pour les vérifications des créances, les syndics dresseront un procès-verbal contenant les noms de ceux des créanciers qui n'auront pas comparu. Ce procès-verbal, clos par le commissaire, les établira en demeure.

**Art. 511.** Le tribunal de commerce, sur le rapport du commissaire, fixera, par jugement, un nouveau délai pour la vérification.

Ce délai sera déterminé d'après la distance du domicile du créancier en demeure, de manière qu'il y ait un jour par chaque distance de trois myriamètres; à l'égard des créanciers résidant hors de France, on observera les délais prescrits par l'article 73. du code de procédure civile.

**Art. 512.** Le jugement qui fixera le nouveau délai, sera notifié aux créanciers, au moyen des formalités voulues par l'article 683. du code de procédure civile; l'accomplissement de ces formalités vaudra signification à l'égard des créanciers qui n'auront pas comparu, sans que, pour cela, la nomination des syndics définitive soit retardée.

**Art. 513.** A défaut de comparution et affirmation dans le délai fixé par le jugement, les défaillants ne seront pas compris dans les répartitions à faire.

Toutefois la voie de l'opposition leur sera ouverte jusqu'à la dernière distribution des deniers inclusivement, mais sans que les défaillants, quand même ils seraient des créanciers inconnus, puissent rien prétendre aux répartitions consommées, qui, à leur égard, seront réputées irrévocables, et sur lesquelles ils seront entièrement déchus de la part qu'ils auraient pu prétendre.

**Art. 510.** At the expiration of the periods limited for the proof of the debts, the assignees shall draw up a report containing the names of the creditors who have not appeared. This report, being closed by the commissioner, shall establish their default.

**Art. 511.** The tribunal of commerce, on the report of the commissioner, may, by an order, give further time for the proof of the debts.

This further time shall be determined by the distance of the domicile of the creditor in default, so that there be a day for every three myriametres; (about 16 miles;) with regard to the creditors residing out of France, the periods of delay prescribed by article 73. of the code of civil procedure, shall be observed.(53)

**Art. 512.** The order which shall determine the further delay, shall be notified to the creditors, according to the formalities required by article 683. of the code of civil procedure;(54) the observance of which shall be equivalent to a notification, with regard to the creditors who shall not have appeared, but the appointment of the definitive assignees shall not, on that account, be retarded.

**Art. 513.** In default of appearance and attestation, within the time fixed by the order of the tribunal, the defaulters shall not be included in the dividends to be made.

Nevertheless, they shall have a right to put in their claims, until the last distribution of the money inclusively, but shall not, even though they be creditors before unknown, have any right to the dividends already made, which, in respect to them, shall be considered irrevocable, and from which they shall be entirely foreclosed, as to any share to which they might have had pretensions.

## CHAPITRE VIII.

## DES SYNDICS DEFINITIFS ET DE LEURS FONCTIONS.

## SECTION PREMIERE.

*De l'Assemblée des Créanciers dont les créances sont vérifiées et affirmées.*

Art. 514. Dans les trois jours après l'expiration des délais prescrits pour l'affirmation des créanciers connus, les créanciers dont les créances ont été admises, seront convoqués par les syndics provisoires.

Art. 515. Aux lieu, jour, et heure qui seront fixés par le commissaire, l'assemblée se formera sous sa présidence; il n'y sera admis que des créanciers reconnus, ou leurs fondés de pouvoirs.

Art. 516. Le failli sera appelé à cette assemblée; il devra s'y présenter en personne, s'il a obtenu un sauf-conduit, et il ne pourra s'y faire représenter que pour des motifs valables, et approuvés par le commissaire.

Art. 517. Le commissaire vérifiera les pouvoirs de ceux qui s'y présenteront comme fondés de procuration: il fera rendre compte en sa présence, par les syndics provisoires, de l'état de la faillite, des formalités qui auront été remplies, et des opérations qui auront eu lieu: le failli sera entendu.

Art. 518. Le commissaire tiendra procès-verbal de ce qui aura été dit et décidé dans cette assemblée.



CHAPTER VIII.

OF THE DEFINITIVE ASSIGNEES, AND THEIR  
FUNCTIONS.

SECTION I.

*Of the meeting of the Creditors whose demands have been  
proved and confirmed.*

Art. 514. Within three days after the expiration of the time prescribed for the attestation of the debts known, the creditors whose demands have been admitted, shall be assembled by the provisional assignees.

Art. 515. At the place, day, and hour, appointed by the commissioner, the meeting shall take place under his presidency; there shall be admitted none but creditors recognised, or their lawful attorneys.

Art. 516. The insolvent shall be called to this meeting; he must appear there himself in person, if he has obtained a protection; he cannot send a person to represent him, except for valid reasons, approved by the commissioner.

Art. 517. The commissioner shall verify the powers of those who appear in virtue of a procuration: he shall cause an account to be rendered in his presence, by the provisional assignees, of the state of the failure, of the formalities observed, and the operations which have taken place: the insolvent shall be heard.

Art. 518. The commissioner shall draw up a report of what shall have been said and decided at this meeting.

## **Titre I.**

traité entre les créanciers  
après l'accomplissement

pour d'un nombre de  
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arts de la totalité des  
ifiées et enregistrées,  
e VII. le tout à peine

inscrits, et ceux nantis  
délibérations relatives

et papiers du failli,  
il ne pourra être fait  
à peine de nullité; le  
présente disposition.

sera, à peine de nullité,  
créanciers présents con-  
cis quarts en somme, la  
out délai.

Concordat seront tenus de  
le et au failli dans huit-

ns la huitaine du juge-  
le rendra obligatoire  
l'hypothèque à chacun  
effet, les syndics seront

SECTION II.

*Of the Concordate.*

**Art. 519.** No composition can take place between the creditors assembled and the insolvent, until after the observance of the formalities above prescribed.

A composition shall not be concluded except by the consent of a majority in number, and three fourths in amount, of the creditors whose debts have been verified and admitted, according to the list proved and registered, conformably to Section IV. of Chapter VII.; otherwise the composition shall be void.

**Art. 520.** The creditors who have a privilege by lien or mortgage, duly registered, and those who have the security of a pledge, shall have no voice in the consultations relative to the concordate.

**Art. 521.** If the examination of the transactions, books, and papers of the insolvent, give rise to a presumption of bankruptcy, there can be no compromise made between him and his creditors, under pain of nullity; the commissioner shall attend to the execution of this provision.

**Art. 522.** The concordate, if agreed to, shall be signed at the meeting, otherwise it shall be declared void; if the majority of the creditors present consent to the composition, but who do not constitute the three fourth parts in amount, the deliberation shall be postponed for eight days at the farthest delay.

**Art. 523.** The creditors opposed to the concordate, shall be required to make known their opposition to the assignees and to the insolvent, within eight days *at the farthest delay*.

**Art. 524.** The composition shall be judicially confirmed, within eight days after the decision in its favour, on hearing the oppositions. This confirmation renders it obligatory on all the creditors, and preserves their lien respectively on the real pro-

tenus de faire inscrire aux hypothèques le jugement d'homologation, à moins qu'il n'y ait été dérogé par le concordat.

Art. 525. L'homologation étant signifiée aux syndics provisoires, ceux-ci rendront leur compte définitif au failli, en présence du commissaire ; ce compte sera débattu et arrêté. En cas de contestation, le tribunal de commerce prononcera : les syndics remettront ensuite au failli l'universalité de ses biens, ses livres, papiers, effets.

Le failli donnera décharge ; les fonctions du commissaire et des syndics cesseront, et il sera dressé du tout procès-verbal par le commissaire.

Art. 526. Le tribunal de commerce pourra, pour cause d'inconduite ou de fraude, refuser l'homologation du concordat ; et, dans ce cas, le failli sera en prévention de banqueroute, et renvoyé, de droit, devant le magistrat de sûreté, qui sera tenu de poursuivre d'office.

S'il accorde l'homologation, le tribunal déclarera le failli excusable, et susceptible d'être réhabilité aux conditions exprimées au titre ci-après *de la réhabilitation*.

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### SECTION III.

#### *De l'Union des Créanciers.*

Art. 527. S'il n'intervient point de traité, les créanciers assemblés formeront, à la majorité individuelle des créanciers présents, un contrat d'union ; ils nommeront un ou plusieurs syndics définitifs : les créanciers nommeront un caissier, chargé de recevoir les sommes provenant de toute espèce de recouvrement. Les syndics définitifs recevront le compte des syndics provisoires, ainsi qu'il a été dit pour le compte des agents à l'article 481.

perty of the insolvent; to this end, the assignees are required to cause to be recorded, at the registry of hypothecation, the judgment of confirmation, unless there be a contrary stipulation in the concordate.

Art. 525. The confirmation being notified to the provisional assignees, the latter shall render their final account to the insolvent, in the presence of the commissioner; this account shall be examined and adjusted. In case of dispute, the tribunal of commerce shall decide: the assignees shall afterwards deliver to the insolvent the whole of his property, his books, papers, and titles.

The insolvent shall give a release; the functions of the commissioner and of the assignees shall cease, and a report of the whole shall be drawn up by the commissioner.

Art. 526. The tribunal of commerce may, on account of misconduct or fraud, refuse to confirm the concordate; and, in that case, the insolvent shall lie under the imputation of bankruptcy, and be remitted, of course, to the magistrate of safety, who shall officially be bound to prosecute him.

If the concordate be confirmed, the tribunal shall declare the insolvent excusable, and susceptible of being restored to his rights and privileges, on the conditions expressed in the title hereafter to be ordained on the *restoration* of insolvents.

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### SECTION III.

#### *Of the Union of the Creditors.*

Art. 527. If no composition take place, the creditors assembled shall form, by the determination of the majority present, a contract of union; they shall appoint one or more definitive assignees; they shall also appoint a treasurer, who shall receive all the money due to the insolvent's estate from any source whatsoever. The definitive assignees shall receive the account of the provisional assignees, in like manner as has been declared in regard to the account of the agents, in article 481.

**Art. 528.** Les syndics représenteront la masse des créanciers; ils procéderont à la vérification du bilan, s'il y a lieu.

Ils poursuivront, en vertu du contrat d'union, et sans autres titres authentiques, la vente des immeubles du failli, celle de ses marchandises et effets mobiliers, et la liquidation de ses dettes actives et passives: le tout sous la surveillance du commissaire, et sans qu'il soit besoin d'appeler le failli.

**Art. 529.** Dans tous les cas, il sera, sous l'approbation du commissaire, remis au failli et à sa famille les vêtements, hardes et meubles nécessaires à l'usage de leurs personnes. Cette remise se fera sur la proposition des syndics, qui en dresseront l'état.

**Art. 530.** S'il n'existe pas de présomption de banqueroute, le failli aura droit de demander, à titre de secours, une somme sur ses biens; les syndics en proposeront la quotité, et le tribunal, sur le rapport du commissaire, la fixera, en proportion des besoins et de l'étendue de la famille du failli, de sa bonne foi, et du plus ou moins de perte qu'il fera supporter à ses créanciers,

**Art. 531.** Toutes les fois qu'il y aura union de créanciers, le commissaire du tribunal de commerce lui rendra compte des circonstances. Le tribunal prononcera, sur son rapport, comme il est dit à la Section II. du présent Chapitre, si le failli est ou non excusable, et susceptible d'être réhabilité.

En cas de refus du tribunal de commerce, le failli sera en prévention de banqueroute, et renvoyé, de droit, devant le magistrat de sûreté, comme il est dit à l'art. 526.

**Art. 528.** The assignees shall represent the mass of the creditors; they shall proceed to the adjustment of the balance-book, if there be occasion.

They shall, in virtue of the contract of union, and without any other warrant, proceed to the sale of the real property of the insolvent, of his goods and moveable effects, and the liquidation of his debts receivable and payable: the whole under the superintendence of the commissioner, and without any need of calling in the assistance of the insolvent.

**Art. 529.** In every case, the wearing apparel and furniture necessary for the personal use of the insolvent and his family, shall be delivered to him, with the approbation of the commissioner, and on the proposal of the assignees, who shall draw up a list of the articles so delivered.

**Art. 530.** If no presumption of bankruptcy exist, the insolvent shall have a right to ask, by way of assistance, an allowance out of his estate; the assignees shall propose the proportion which shall be determined by the tribunal, on the report of the commissioner, according to the necessities and the extent of the family of the insolvent, his honesty, and the more or less loss his creditors may sustain.

**Art. 531.** At every meeting of the creditors, the commissioner of the tribunal of commerce shall render an account of the circumstances of the failure, on which the tribunal shall pronounce, as is declared in article 526., whether the insolvent be excusable or not, and susceptible of being restored to his rights and privileges.

In case the tribunal of commerce make no order in favour of the insolvent, he shall lie under the imputation of bankruptcy, and be remitted to the magistrate of public safety, conformably to the regulation of article 526.

## CHAPITRE IX.

### DES DIFFERENTES ESPECES DE CREANCIERS ET DE LEURS DROITS EN CAS DE FAILLITE.

#### SECTION PREMIERE.

##### *Dispositions générales.*

**Art. 532.** S'il n'y a pas d'action en expropriation des immeubles, formée avant la nomination des syndics définitifs, eux seuls seront admis à poursuivre la vente ; ils seront tenus d'y procéder dans huitaine, selon la forme qui sera indiquée ci-après.

**Art. 533.** Les syndics présenteront au commissaire l'état des créanciers se prétendant privilégiés sur les meubles, et le commissaire autorisera le paiement de ces créanciers sur les premiers deniers rentrés. S'il y a des créanciers contestant le privilège, le tribunal prononcera ; les frais seront supportés par ceux dont la demande aura été rejetée, et ne seront pas au compte de la masse.

**Art. 534.** Le créancier porteur d'engagements solidaires entre le failli et d'autres coobligés qui sont en faillite, participera aux distributions dans toutes les masses, jusqu'à son parfait et entier paiement.

**Art. 535.** Les créanciers du failli qui seront valablement nantis par des gages, ne seront inscrits dans la masse que pour mémoire.

**Art. 536.** Les syndics seront autorisés à retirer les gages au profit de la faillite, en remboursant la dette.



**CHAPTER IX.**

**OF THE DIFFERENT SPECIES OF CREDITORS, AND THEIR  
RIGHTS IN CASES OF FAILURE.**

**SECTION I.**

*General Provisions.*

Art. 532. If there be no execution against the real property of the insolvent, levied before the appointment of the definitive assignees, they solely shall be authorized to institute proceedings for the sale of the same, which they shall be bound to prosecute, within eight days, according to the mode hereafter prescribed.

Art. 533. The assignees shall present to the commissioner, a list of the creditors claiming to be privileged by a lien on the moveables, and the commissioner shall authorize the payment of these claims out of the first money received. If any of the creditors dispute the privilege, the tribunal shall decide; the costs shall be borne by those whose demands are rejected, and shall not come out of the common fund.

Art. 534. The creditor holding a joint and several obligation, between the insolvent and other persons, who are also in a state of failure, shall participate in the dividends of all their respective estates, until he shall be fully paid.

Art. 535. The creditors of the insolvent, who are fully secured by pledges, shall have their names enrolled in the general mass, only by way of memorandum.

Art. 536. The assignees shall be authorized to redeem the pledges, for the benefit of the insolvent's estate, by paying the amount of the debt.

Art. 537. Si les syndics ne retirent pas le gage, qu'il soit vendu par les créanciers, et que le prix excède la créance, le surplus sera recouvré par les syndics ; si le prix est moindre que la créance, le créancier nanti viendra à contribution pour le surplus.

Art. 538. Les créanciers garantis par un cautionnement seront compris dans la masse, sous la déduction des sommes qu'ils aurent reçues de la caution ; la caution sera comprise dans la même masse pour tout ce qu'elle aura payé à la décharge du failli.

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## SECTION II.

### *Des Droits des Créanciers hypothécaires.*

Art. 539. Lorsque la distribution du prix des immeubles sera faite antérieurement à celle du prix des meubles, ou simultanément, les seuls créanciers hypothécaires non remplis sur le prix des immeubles, concourront, à proportion de ce qui leur restera dû, avec les créanciers chirographaires sur les deniers appartenants à la masse chirographaire.

Art. 540. Si la vente du mobilier précède celle des immeubles, et donne lieu à une ou plusieurs répartitions de deniers avant la distribution du prix des immeubles, les créanciers hypothécaires concourront à ces répartitions dans la proportion de leurs créances totales, et sauf, le cas échéant, les distractions dont il sera ci-après parlé.

Art. 541. Après la vente des immeubles et le jugement d'ordre entre les créanciers hypothécaires, ceux d'entre ces derniers qui viendront en ordre utile sur le prix des immeubles pour la totalité

Art. 537. If the assignees do not redeem the pledge, and it be sold by the creditor for a higher price than the amount of the debt, the surplus shall be paid over to the assignees; if the price fall short of the debt, the creditor holding the pledge shall be entitled to a dividend on the insolvent's estate, for the balance due to him.

Art. 538. The creditors who hold a guaranty shall be included in the mass, deducting the sums which they shall have received from the surety; the surety shall be included in the same mass for so much as he shall have paid in discharge of the insolvent.

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## SECTION II.

### *Of the Rights of Mortgage Creditors.*

Art. 539. When the distribution of the proceeds of the real property shall be made previously to that of the proceeds of the personal property, or simultaneously with it, the mortgage creditors solely, whose demands are not satisfied out of the price of the real property, shall come in for what remains due to them, ratably with the simple contract creditors, on the funds of the general mass.

Art. 540. If the sale of the personal property precede that of the real, and there should be occasion for one or more dividends of the money thence arising, before the distribution of the proceeds of the real property, the mortgage creditors shall come in for their share of those dividends, in proportion to their full demands, subject, however, should the case happen, to the deductions hereafter mentioned.

Art. 541. After the sale of the real property, and the judgment declaring the order of the different mortgage creditors, those among them who are entitled to a preference by priority of date

de leurs créances, ne toucheront le montant de leur collocation hypothécaire que sous la déduction des sommes par eux perçues dans la masse chirographaire.

Les sommes ainsi déduites ne resteront point dans la masse hypothécaire, mais retourneront à la masse chirographaire, au profit de laquelle il en sera fait distraction.

Art. 542. A l'égard des créanciers hypothécaires qui ne seront colloqués que partiellement dans la distribution du prix des immeubles, il sera procédé comme il suit :

Leurs droits sur la masse chirographaire seront définitivement réglés d'après les sommes dont ils resteront créanciers après leur collocation immobilière ; et les deniers qu'ils auront touchés au-delà de cette proportion, dans la distribution antérieure, leur seront retenus sur le montant de leur collocation hypothécaire et reversés dans la masse chirographaire.

Art. 543. Les créanciers hypothécaires qui ne viennent point en ordre utile, seront considérés comme purement et simplement chirographaires.



### SECTION III.

#### *Des Droits des Femmes.*

Art. 544. En cas de faillite, les droits et actions des femmes, lors de la publication de la présente loi, seront réglés ainsi qu'il suit :

Art. 545. Les femmes mariées sous le régime dotal, les femmes séparées de biens, et les femmes communes en biens, qui n'auraient point mis les immeubles apportés, en communauté, reprendront en nature lesdits immeubles et ceux qui leur seront survenus par successions ou donations entre-vifs ou pour cause de mort.

Art. 546. Elles reprendront pareillement les immeubles acquis

for the whole amount of their demands on the real estate, shall receive the same, according to their classification, subject to a deduction of the sums which they may have already received from the simple contract fund.

The sums thus deducted shall not remain in the privileged fund, but return to the simple contract fund, for the benefit of which a separation shall be made.

Art. 542. With respect to the mortgage creditors, who shall be entitled only to a partial payment out of the proceeds of the real estate, the following rule shall be adopted.

Their rights in the simple contract fund, shall be finally determined by the amount for which they shall remain creditors, after the adjustment of their respective quotas in the real estate; and the money which they shall have previously received beyond this proportion, shall be retained out of their quota from the real estate, and return to the simple contract fund.

Art. 543. The mortgage creditors whose demands are excluded from a participation in the real estate, shall be considered as purely and simply contract creditors.

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### SECTION III.

#### *Of the Rights of married women.*

Art. 544. In case of failure, the rights and privileges of married women, at the time of the publication of the present law, shall be regulated as follows :

Art. 545. Women, married under the dotal regulation, those with separate property, (55) and those, who having married under the community regulation, shall not have put their real property in community, shall resume their exclusive right to it, and to whatever other real property shall come to them by inheritance, donation or bequest.

Art. 546. They shall equally resume their exclusive right

par elles et en leur nom, des deniers provenant desdites successions et donations, pourvu que la déclaration d'emploi soit expressément stipulée au contrat d'acquisition, et que l'origine des deniers soit constatée par inventaire ou par tout autre acte authentique.

Art. 547. Sous quelque régime qu'ait été formé le contrat de mariage, hors le cas prévu par l'article précédent, la présomption légale est que les biens acquis par la femme du failli appartiennent à son mari, sont payés de ses deniers, et doivent être réunis à la masse de son actif; sauf à la femme à fournir la preuve du contraire.

Art. 548. L'action en reprise, résultant des dispositions des articles 545. et 546. ne sera exercée par la femme qu'à charge des dettes et hypothèques dont les biens seront grevés, soit que la femme s'y soit volontairement obligée, soit qu'elle y ait été judiciairement condamnée.

Art. 549. La femme ne pourra exercer, dans la faillite, aucune action à raison des avantages portés au contrat de mariage; et réciproquement les créanciers ne pourront se prevaloir, dans aucun cas, des avantages faits par la femme au mari dans le même contrat.

Art. 550. En cas que la femme ait payé des dettes pour son mari, la présomption légale est qu'elle l'a fait des deniers de son mari; et elle ne pourra, en conséquence, exercer aucune action dans la faillite, sauf la preuve contraire, comme il est dit à l'article 547.

Art. 551. La femme dont le mari était commerçant à l'époque de la célébration du mariage, n'aura hypothèque pour les deniers ou effets mobiliers qu'elle justifiera, par actes authentiques, avoir apportés en dot, pour le emploi de ses biens aliénés pendant le mariage, et pour l'indemnité des dettes par elle contractées avec son mari, que sur les immeubles qui appartenaient à son mari à l'époque ci-dessus.

Art. 552. Sera, à cet égard, assimilée à la femme dont le mari était commerçant à l'époque de la célébration du mariage, la

to the real property purchased by them, and in their names, with money arising from the said inheritances and donations, provided the application of the same be expressly declared in the title deeds, and the origin of the money be proved by an inventory or some other authentic document.(56)

• Art. 547. Under whatever regulation the marriage contract may have been formed, except in the case provided for by the preceding article, the legal presumption is, that the property acquired by the wife of an insolvent belongs to her husband, was bought with his money, and ought to go into the mass of his estate; saving to the wife the right to produce proof of the contrary.

Art. 548. The right of recovery, which may be claimed by the wife, in consequence of the provisions in articles 545. and 546. shall be subject to the charge of the debts, liens and mortgages with which the property may be encumbered, either by her voluntary consent, or by judicial award.

Art. 549. The wife cannot advance any claims to the estate of her insolvent husband, by reason of advantages(57) stipulated in her favour in the marriage contract; nor shall the creditors, in any case, avail themselves of the stipulations made by the wife in favour of the husband in the same contract.

Art. 550. In case the wife has paid debts for her husband,(58) the legal presumption is, that she has paid them with the money of her husband; and unless she prove the contrary, as is provided by article 547. she can have no right to a reimbursement.

Art. 551. The wife whose husband was in trade when their marriage took place, and who shall have brought to him money, or other property, as a dowry, which she can verify by authentic documents, and which has been alienated during the marriage, shall have a lien for the restitution of said property and as an indemnity for debts jointly contracted with her husband, only on the real estate of her husband, at the period of their marriage aforesaid.(59)

Art. 552. The provision contained in the preceding article, shall be applicable to the wife of a merchant who became such

femme qui aura épousé un fils de négociant, n'ayant, à cette époque, aucun état ou profession déterminée, et qui deviendrait lui-même négociant.

Art. 553. Sera exceptée des dispositions des articles 549. et 551. et jouira de tous les droits hypothécaires accordés aux femmes par le Code Napoléon, la femme dont le mari avait, à l'époque de la célébration du mariage, une profession déterminée autre que celle de négociant ; néanmoins, cette exception ne sera pas applicable à la femme dont le mari ferait le commerce dans l'année qui suivrait la célébration du mariage.

Art. 554. Tous les meubles meublants, effets mobiliers, diamants, tableaux, vaisselle d'or et d'argent, et autres objets tant à l'usage du mari qu'à celui de la femme, sous quelque régime qu'ait été formé le contrat de mariage, seront acquis aux créanciers, sans que la femme puisse en recevoir autre chose que les habits et linge à son usage, qui lui seront accordés d'après les dispositions de l'article 529.

Toutefois la femme pourra reprendre les bijoux, diamants et vaisselle qu'elle pourra justifier, par état légalement dressé, annexé aux actes, ou par bons et loyaux inventaires, lui avoir été donnés par contrat de mariage, ou lui être advenus par succession seulement.

Art. 555. La femme qui aurait détourné, diverti ou recélé des effets mobiliers portés en l'article précédent, des marchandises, des effets de commerce, de l'argent comptant, sera condamnée à les rapporter à la masse, et poursuivie en outre comme complice de banqueroute frauduleuse.

Art. 556. Pourra aussi, suivant la nature des cas, être poursuivie comme complice de banqueroute frauduleuse, la femme qui aura prêté son nom ou son intervention à des actes faits par le mari en fraude de ses créanciers.

Art. 557. Les dispositions portées en la présente section ne seront point applicables aux droits et actions des femmes, acquis avant la publication de la présente loi.



subsequent to their marriage, not being at the time of their marriage, of any determined profession, but whose father was then a merchant.

Art. 553. The wife, whose husband had, at the period of their marriage, a determined profession, other than that of a merchant, shall be excepted from the provisions in articles 549. and 551. and shall enjoy all the privileges of lien and right of mortgage, granted to married women by the Code Napoleon; nevertheless, this exception shall not be applicable to the wife whose husband should engage in commerce, within the year next succeeding the celebration of the marriage.

Art. 554. All the furniture, personal property, diamonds, pictures, plate, and other articles, as well for the use of the husband, as that of the wife, under whatever regulation the marriage contract may have been formed, shall go to the creditors, without reserving for the wife anything but the necessary clothes, and linen, which shall be granted to her conformably to the provisions of article 529.

The wife may, however, retain the jewels, diamonds and plate, which she can prove, by a legally certified list, or by good and creditable inventories, to have been given to her by the contract of marriage, or to have come to her solely by inheritance.

Art. 555. The wife who shall have conveyed away, secreted, or concealed, any of the effects mentioned in the preceding article, any merchandise, commercial bills, securities, or ready money, shall be compelled to restore the same to the creditors, and be prosecuted besides as an accomplice in fraudulent bankruptcy.

Art. 556. The wife who shall have lent her name or assistance to any acts done by the husband, to defraud his creditors, may also, according to the nature of the case, be prosecuted as an accomplice in fraudulent bankruptcy.

Art. 557. The provisions contained in the present section shall not be applicable to the rights and privileges of married women, acquired before the publication of the present law.

**CHAPITRE X.****DE LA REPARTITION ENTRE LES CREANCIERS, ET DE LA LIQUIDATION DU MOBILIER.**

**Art. 558.** Le montant de l'actif mobilier du failli, distraction faite des frais et dépenses de l'administration de la faillite, du secours qui a été accordé au failli, et des sommes payées aux privilégiés, sera réparti entre tous les créanciers, au marc le franc de leurs créances vérifiées et affirmées.

**Art. 559.** A cet effet, les syndics remettront, tous les mois, au commissaire un état de situation de la faillite, et des deniers existants en caisse ; le commissaire ordonnera, s'il y a lieu, une répartition entre les créanciers, et en fixera la quotité.

**Art. 560.** Les créanciers seront avertis des décisions du commissaire et de l'ouverture de la répartition.

**Art. 561.** Nul paiement ne sera fait que sur la représentation du titre constitutif de la créance.

Le caissier mentionnera, sur le titre, le paiement qu'il effectuera ; le créancier donnera quittance en marge de l'état de répartition.

**Art. 562.** Lorsque la liquidation sera terminée, l'union des créanciers sera convoquée à la diligence des syndics, sous la présidence du commissaire ; les syndics rendront leur compte, et son reliquat formera la dernière répartition.

**Art. 563.** L'union pourra, dans tout état de cause, se faire autoriser par le tribunal de commerce, le failli dûment appelé, à traiter à forfait des droits et actions dont le recouvrement n'aurait pas été opéré, et à les aliéner ; en ce cas, les syndics feront tous les actes nécessaires.

**CHAPTER X.**

**OF THE DIVIDENDS AMONG THE CREDITORS, AND  
THE LIQUIDATION OF THE PERSONAL PROPERTY.**

**Art. 558.** The amount of the personal property of the insolvent, deducting the costs and expenses of the administration of the estate, the allowance granted to the insolvent, and the sums paid to the privileged creditors, shall be divided among all the creditors ratably, according to their respective demands proved and confirmed.

**Art. 559.** For this purpose, the assignees shall deliver, every month, to the commissioner, a statement of the situation of the insolvent's estate, and of the money existing in the chest; the commissioner shall order, if there be occasion, a dividend among the creditors, and shall fix the proportion.

**Art. 560.** The creditors shall be notified of the decision of the commissioner, and of the time of making the dividend.

**Art. 561.** No payment shall be made but on the production of the document attesting the debt.

The treasurer shall endorse, on the document, the payment made, and the creditor shall give an acquittance, on the margin, of the statement of the dividends.

**Art. 562.** When the liquidation shall be finished, a meeting of the creditors shall be called, at the instance of the assignees, under the presidency of the commissioner; the assignees shall render their account, and the balance shall form the last dividend.

**Art. 563.** The union of creditors may, on every necessary occasion, be authorized by the tribunal of commerce, the insolvent being duly notified, to make any composition for the disposal and transfer of any debts, or rights of action due or accrued to the insolvent, the recovery of which has not been effected: in this case the assignees shall execute all the necessary instruments of writing.

**CHAPITRE XI.****DU MODE DE VENTE DES IMMEUBLES DU FAILLI.**

**Art. 564.** Les syndics de l'union, sous l'autorisation du commissaire, procèderont à la vente des immeubles, suivant les formes prescrites par le Code Napoléon pour la vente des biens des mineurs.

**Art. 565.** Pendant huitaine, après l'adjudication, tout créancier aura droit de surenchérir. La surenchère ne pourra être au-dessous du dixième du prix principal de l'adjudication.

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**TITRE II.***De la Cession de Biens.*

**Art. 566.** La cession de biens, par le failli, est volontaire ou judiciaire.

**Art. 567.** Les effets de la cession volontaire se déterminent par les conventions entre le failli et les créanciers.

**Art. 568.** La cession judiciaire n'éteint point l'action des créanciers sur les biens que le failli peut acquérir par la suite ; elle n'a d'autre effet que de soustraire le débiteur à la contrainte par corps.

**Art. 569.** Le failli qui sera dans le cas de réclamer la cession judiciaire, sera tenu de former sa demande au tribunal, qui se fera remettre les titres nécessaires : la demande sera insérée dans les papiers publics, comme il est dit à l'article 683. du code de procédure civile.

## CHAPTER XI.

### *Of the Mode of Selling the Real Property of the Insolvent.*

Art. 564. The assignees of the union of creditors, under the authority of the commissioner, shall proceed to the sale of the real property, observing the forms prescribed by the Code Napoleon for the sale of the estates of minors.

Art. 565. During eight days after the adjudication of sale, every creditor shall have a right to bid. The bids cannot be less than a tenth part of the price at which the property is set up.

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## TITLE II.

### *Of the Assignment of the Estate.(80)*

Art. 566. The assignment of the insolvent's estate is either voluntary or judicial.

Art. 567. The effects of the voluntary assignment are determined by the agreement between the insolvent and the creditors.

Art. 568. The judicial assignment does not extinguish the claim of the creditors to the property which the insolvent may afterwards acquire; it has no other effect than to exempt the debtor from personal imprisonment.

Art. 569. The insolvent who shall be in a situation to claim the judicial assignment, shall be required to make his request to the tribunal, who will cause the necessary proofs to be laid before them: the claim shall be advertised in the public papers, conformably to article 683. of the code of civil procedure.

Art. 570. La demande ne suspendra l'effet d'aucune poursuite, sauf au tribunal à ordonner, parties appelées, qu'il y sera sursis provisoirement.

Art. 571. Le failli admis au bénéfice de cession sera tenu de faire ou de réitérer sa cession en personne et non par procureur, ses créanciers appelés, à l'audience du tribunal de commerce de son domicile, et, s'il n'y a pas de tribunal de commerce, à la maison commune, un jour de séance. La déclaration du failli sera constatée, dans ce dernier cas, par le procès-verbal de l'huissier, qui sera signé par le maire.

Art. 572. Si le débiteur est détenteur, le jugement qui l'admettra au bénéfice de cession ordonnera son extraction, avec les précautions en tel cas requises et accoutumées, à l'effet de faire sa déclaration conformément à l'article précédent.

Art. 573. Les nom, prénoms, profession et demeure du débiteur, seront insérés dans des tableaux à ce destinés, placés dans l'auditoire du tribunal de commerce de son domicile, ou du tribunal civil qui en fait les fonctions, dans le lieu des séances de la maison commune, et à la bourse.

Art. 574. En exécution du jugement, qui admettra le débiteur au bénéfice de cession, les créanciers pourront faire vendre les biens meubles et immeubles du débiteur, et il sera procédé à cette vente dans les formes prescrites pour les ventes faites par union de créanciers.

Art. 575. Ne pourront être admis au bénéfice de cession :

1° Les stellionataires, les banqueroutiers frauduleux, les personnes condamnées pour fait de vol ou d'escroquerie, ni les personnes comptables.

2° Les étrangers, les tuteurs, administrateurs ou dépositaires.

**Art. 570.** This claim shall not suspend the effect of any prosecution, saving to the tribunal the right to order, on hearing the parties, a provisional stay of proceedings.

**Art. 571.** The insolvent admitted to the benefit of the assignment, shall be required to make or confirm it in person, and not by attorney, his creditors being notified, at the audience of the tribunal of commerce of his domicile, and, if no tribunal of commerce be there, at the town-house, on a session day.(61) The declaration of the insolvent, in the latter case, shall be verified, by the report of the bailiff, signed by the mayor.

**Art. 572.** If the debtor be in custody, the order admitting him to the benefit of the assignment, shall direct him to be brought into court, with the requisite and customary precautions in similar cases, to the end that he make his declaration conformably to the preceding article.

**Art. 573.** The name and surname, profession and residence of the debtor, shall be inserted in the tablets destined for this purpose, and placed in the auditory of the tribunal of commerce of his domicile, or in that of the civil tribunal, where there is no tribunal of commerce, in the hall of the town-house, and on the exchange.

**Art. 574.** In execution of the judgment, which shall admit the debtor to the benefit of the assignment, the creditors may cause to be sold the personal and real estate of the debtor, and the same proceedings, in regard to this sale, shall be adopted, as are prescribed for the sales made by the union of creditors.

**Art. 575.** The following persons are excluded from the benefit of an assignment:

1st. Persons guilty of stellionate, fraudulent bankrupts, persons convicted of theft or swindling, or accountable agents.

2d. Foreigners, guardians, administrators, or depositaries.

**TITRE III.***De la Revendication.*

Art. 576. Le vendeur pourra, en cas de faillite, revendiquer les marchandises par lui vendues et livrées, et dont le prix ne lui a pas été payé, dans les cas et aux conditions ci-après exprimés.

Art. 577. La revendication ne pourra avoir lieu que pendant que les marchandises expédiées seront encore en route, soit par terre, soit par eau, et avant qu'elles soient entrées dans les magasins du failli ou dans les magasins du commissionnaire chargé de les vendre pour le compte du failli.

Art. 578. Elles ne pourront être revendiquées, si, avant leur arrivée, elles ont été vendues sans fraude, sur factures et connaissements ou lettres de voituress.

Art. 579. En cas de revendication, le revendiquant sera tenu de rendre l'actif du failli indemne de toute avance faite pour fret ou voitures, commission, assurance ou autres frais, et de payer les sommes dues pour mêmes causes, si elles n'ont pas été acquittées.

Art. 580. La revendication ne pourra être exercée que sur les marchandises qui seront reconnues être identiquement les mêmes, et que lorsqu'il sera reconnu que les balles, barriques ou enveloppes dans lesquelles elles se trouvaient lors de la vente, n'ont pas été ouvertes, que les cordes ou marques n'ont été ni enlevées ni changées, et que les marchandises n'ont subi en nature et quantité, ni changement ni altération.

Art. 581. Pourront être revendiquées, aussi long-temps qu'elles existeront en nature, en tout ou en partie, les marchandises consignées au failli, à titre de dépôt, ou pour être vendues pour le compte de l'envoyeur: dans ce dernier cas même, le prix des



**TITLE III.**

*Of Stoppage in transitu.*(62)

Art. 576. The vendor may, in case of failure, stop *in transitu*, or reclaim the goods by him sold and delivered, and the price of which has not been paid to him, in the cases, and on the conditions hereinafter expressed.

Art. 577. Stoppage *in transitu* can take place only, when the goods sold are on the way to their place of destination, whether by land or water, and before they have been received into the warehouse of the insolvent, or that of his factor or agent, charged with selling them for account of the insolvent.

Art. 578. They cannot be stopped *in transitu*, if, before their arrival, they have been *bona fide* sold according to the invoices and bills of lading, or bills of transportation.

Art. 579. In case of stoppage *in transitu*, the vendor shall be bound to indemnify the estate of the insolvent for all advances for freight, or transportation, commission, insurance, or other charges, or to pay the sums due for these expenses, if they have not been discharged.

Art. 580. Stoppage *in transitu* can be exercised only on the goods which shall be recognised and identified, and when it shall be evident that the bales, casks, or packs, in which they were, at the time of the sale, have not been opened, that the cords or marks have neither been taken off nor altered, and that the goods have undergone no change whatever, in their nature or quantity.

Art. 581. Goods consigned to the insolvent as a deposit, or to be sold on account of the consignor, may be reclaimed, as long as they shall exist in specie, wholly or in part. In case of a consignment for sale on account of the consignor, the price even

dites marchandises pourra être revendiqué, s'il n'a pas été payé ou passé en compte courant entre le failli et l'acheteur.

Art. 582. Dans tous les cas de revendication, excepté ceux de dépôt et de consignment de marchandises, les syndics des créanciers auront la faculté de retenir les marchandises revendiquées, en payant au réclamant le prix convenu entre lui et le failli.

Art. 583. Les remises en effets de commerce, ou en tous autres effets non encore échus, ou échus et non encore payés, et qui se trouvent en nature dans le portefeuille du failli à l'époque de sa faillite, pourront être revendiquées, si ces remises ont été faites par le propriétaire avec le simple mandat d'en faire le recouvrement et d'en garder la valeur à sa disposition, ou si elles ont reçu de sa part la destination spéciale de servir au paiement d'acceptations ou de billets tirés au domicile du failli.

Art. 584. La revendication aura pareillement lieu pour les remises faites sans acceptation ni disposition, si elles sont entrées dans un compte courant par lequel le propriétaire ne serait que créancier ; mais elle cessera d'avoir lieu, si, à l'époque des remises, il était débiteur d'une somme quelconque.

Art. 585. Dans les cas où la loi permet la revendication, les syndics examineront les demandes ; ils pourront les admettre sans l'approbation du commissaire ; s'il y a contestation, le tribunal prononcera, après avoir entendu le commissaire.

of the goods, if sold, may be recovered, if it has not been paid over, or passed in account current between the insolvent and the buyer.

Art. 582. In every case of stoppage *in transitu*, except those of deposit and of consignment, the assignees of the insolvent's estate shall have the right to retain the goods sold, on paying to the claimant the price agreed for, between him and the insolvent.

Art. 583. Remittances of commercial securities, or of any other instruments of writing not yet due, or due and not yet paid, and which shall be found in the possession of the insolvent, at the period of his failure, may be recovered, if these remittances were made by the proprietor, with an order only to collect their value and keep the same subject to his disposal, or if they have been specially appropriated by him to the payment of acceptances, or bills drawn payable at the domicile of the insolvent.

Art. 584. Recovery may also be had of remittances made without acceptances, or special appropriation, if they be entered in an account current, by which the owner should appear only as a creditor; but it shall be barred, if, at the period of the remittances, he was a debtor in any sum whatever.

Art. 585. In cases in which the law permits stoppage *in transitu*, or recovery, the assignees shall examine the claims; they may admit them, subject to the approbation of the commissioner; if a controversy take place, the tribunal shall decide, after hearing the commissioner.

## TITRE IV.

### DES BANQUEROUTES.

#### CHAPITRE PREMIER.

##### *De la Banqueroute simple.*

Art. 586. Sera poursuivi comme banqueroutier simple et pourra être déclaré tel, le commerçant failli qui se trouvera dans l'un ou plusieurs des cas suivants, savoir :

1° Si les dépenses de sa maison, qu'il est tenu d'inscrire mois par mois sur son livre-journal, sont jugées excessives.

2° S'il est reconnu qu'il a consommé de fortes sommes au jeu, ou à des opérations de pur hasard.

3° Si l'on résulte de son dernier inventaire que son actif étant de cinquante pour cent au-dessous de son passif, il a fait des emprunts considérables, et s'il a revendu des marchandises à perte ou au-dessous du cours.

4° S'il a donné des signatures de crédit ou de circulation pour une somme triple de son actif, selon son dernier inventaire.

Art. 587. Pourra être poursuivi comme banqueroutier simple, et être déclaré tel,

Le failli qui n'aura pas fait, au greffe, la déclaration prescrite par l'article 440.

Celui qui, s'étant absenté, ne se sera pas présenté en personne aux agents et aux syndics dans les délais fixés, et sans empêchement légitime.

Celui qui présentera des livres irrégulièrement tenus, sans néanmoins que les irrégularités indiquent de fraude, ou qui ne les présentera pas tous.

## TITLE IV.

### OF BANKRUPTCIES.

#### CHAPTER I.

##### *Of Simple Bankruptcy.*

Art. 586. The insolvent merchant who shall be found in one or more of the following cases, *shall* be prosecuted for the offence of simple bankruptcy, and may be convicted of the same, to wit :

1st. If the expenses of his household, which he is required to enter monthly on his journal, are adjudged to be excessive.

2d. If it be proved that he has wasted large sums in gaming, or in operations of mere hazard.

3d. If it appear from his last inventory, that his property and credits being fifty per cent. less than his debts, he has borrowed considerable sums of money, and has sold his goods at a loss, or below the market price.

4th. If he has issued his signature, and become responsible for a sum triple the amount of his property, according to his last inventory.

Art. 587. The insolvent *may* be prosecuted as a simple bankrupt, and declared such,

If he has not made in the clerk's office the declaration prescribed by article 440.

If, after having absented himself, he shall not return and appear, in person, before the agents and assignees, within the periods limited by law, unless prevented by a legitimate obstacle.

If he produce books irregularly kept, though the irregularities be not indicative of fraud ; or if he do not produce all his books.

Celui qui, ayant une société, ne se sera pas conformé à l'article 440.

Art. 588. Les cas de banqueroute simple seront jugés par les tribunaux de police correctionnelle, sur la demande des syndics ou sur celle de tout créancier du failli, ou sur la poursuite d'office qui sera faite par le ministère public.

Art. 589. Les frais de poursuite en banqueroute simple seront supportés par la masse, dans le cas où la demande aura été introduite par les syndics de la faillite.

Art. 590. Dans le cas où la poursuite aura été intentée par un créancier, il supportera les frais, si le prévenu est déchargé : lesdits frais seront supportés par la masse, s'il est condamné.

Art. 591. Les procureurs impériaux sont tenus d'interjeter appel de tous jugements des tribunaux de police correctionnelle, lorsque, dans le cours de l'instruction, ils auront reconnu que la prévention de banqueroute simple est de nature à être convertie en prévention de banqueroute frauduleuse.

Art. 592. Le tribunal de police correctionnelle, en déclarant qu'il y a banqueroute simple, devra, suivant l'exigence des cas, prononcer l'emprisonnement pour un mois au moins, et deux ans au plus.

Les jugements seront affichés, en outre, et insérés dans un journal, conformément à l'art. 683. du code de procédure civile.

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## CHAPITRE II.

### DE LA BANQUEROUTE FRAUDULEUSE.

Art. 593. Sera déclaré banqueroutier frauduleux tout commerçant failli qui se trouvera dans un ou plusieurs des cas suivants, savoir :

1° S'il a supposé des dépenses, ou des pertes, ou ne justifie pas de l'emploi de toutes ses recettes.

If, being concerned in a partnership, he has not conformed to the rules prescribed by article 440.

Art. 588. The cases of simple bankruptcies shall be tried by the tribunals of correctional police, at the instance of the assignees, or on the complaint of any creditor of the insolvent, or on the information *ex officio* of the public prosecutor.

Art. 589. The expenses of prosecution for simple bankruptcy, shall be borne by the general fund, in cases where the complaint shall have been made by the assignees of the insolvent.

Art. 590. In cases where the prosecution shall have been instituted on the complaint of a creditor, he shall bear the expenses, if the accused be acquitted; but if convicted, the expenses shall be borne by the general fund.

Art. 591. The imperial prosecutors are required to interpose an appeal from all the judgments of the tribunals of correctional police, (63) when, in the course of the investigation, they shall have discovered that the accusation of simple bankruptcy is of a nature to be converted into that of fraudulent bankruptcy.

Art. 592. The tribunal of correctional police, on declaring the party guilty of simple bankruptcy, must, according to the nature of the case, sentence the bankrupt to imprisonment, for a term not less than a month, nor more than two years.

The judgment shall be posted up, and also published in a newspaper, conformably to article 683. of the code of civil procedure.

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## CHAPTER II.

### OF FRAUDULENT BANKRUPTCY.

Art. 593. Every insolvent merchant who shall be found in one or more of the following cases, *shall* be declared a fraudulent bankrupt, to wit:

1st. If he has stated fictitious losses and expenses, or does not account for the employment of all the money received by him.

2° S'il a détourné aucune somme d'argent, aucune dette active, aucunes marchandises, denrées ou effets mobiliers.

3° S'il a fait des ventes, négociations ou donations supposées.

4° S'il a supposé des dettes passives et collatérales entre lui et des créanciers fictifs, en faisant des écritures simulées, ou en se constituant débiteur, sans cause ni valeur, par des actes publics ou par des engagements sous signature privée.

5° Si, ayant été chargé d'un mandat spécial, ou constitué dépositaire d'argent, d'effets de commerce, de denrées ou marchandises, il a, au préjudice du mandat ou du dépôt, appliqué à son profit les fonds ou la valeur des objets sur lesquels portait, soit le mandat, soit le dépôt.

6° S'il a acheté des immeubles ou des effets mobiliers à la faveur d'un prête-nom.

7° S'il a caché ses livres.

Art. 594. Pourra être poursuivi comme banqueroutier frauduleux et être déclaré tel,

Le failli qui n'a pas tenu de livres, ou dont les livres ne présenteront pas sa véritable situation active et passive.

Celui qui, ayant obtenu un sauf-conduit, ne se sera pas représenté à justice.

Art. 595. Les cas de banqueroute frauduleuse seront poursuivis d'office devant les cours de justice criminelle, par les procureurs impériaux et leurs substitués sur la notoriété publique, ou sur la dénonciation, soit des syndics, soit d'un créancier.

Art. 596. Lorsque le prévenu aura été atteint et déclaré coupable des délits énoncés dans les articles précédents, il sera puni des peines portées au code pénal pour la banqueroute frauduleuse.

Art. 597. Seront déclarés complices des banqueroutiers frauduleux, et seront condamnés aux mêmes peines que l'accusé, les individus qui seront convaincus de s'être entendus avec le banqueroutier pour recéler ou soustraire tout ou partie de ses biens meubles ou immeubles; d'avoir acquis sur lui des créances fausses, et qui, à la vérification et affirmation de leurs créances, auront persévéré à les faire valoir comme sincères et véritables.



2d. If he has fraudulently conveyed, or secreted any credit, any sum of money, goods, produce, or moveable effects.

3d. If he has made fictitious sales, negotiations, or donations.

4th. If he has, by covin and fraud, acknowledged debts to fictitious creditors, either by false writings, or constituting himself a debtor, by authentic instruments or engagements under private signature, without any consideration.

5th. If, having been charged with a special commission to receive money, commercial securities, produce or merchandise for another person, or constituted a depositary for any of those objects, he shall have violated the trust, and applied to his own use the funds or property confided to him.

6th. If he has bought real estate or moveable effects by means of an assumed name.

7th. If he has concealed his books.

Art. 594. The insolvent *may* be prosecuted for fraudulent bankruptcy, and declared guilty,

If he has kept no books, or if his books do not represent the real situation of his debts and credits.

If, having obtained a protection, he do not personally appear on a legal citation.

Art. 595. Cases of fraudulent bankruptcy shall be prosecuted *ex officio* in the courts of criminal judicature, by the imperial prosecutors and their deputies, on public notoriety, or on the complaint and information either of the assignees or of a creditor.

Art. 596. If the accused be convicted of any of the misdemeanors mentioned in the preceding articles, he shall undergo the punishment ordained in the penal code against fraudulent bankrupts.(64)

Art. 597. Those persons who shall be convicted of privity with a fraudulent bankrupt, in concealing or conveying away the whole or a part of his personal or real estate, or of having collusively become his fictitious creditors, and who, at the verification and confirmation of the debts, shall persist in representing their demands as just and true, shall be declared accomplices of the fraudulent bankrupt, and suffer the same punishment.

Art. 598. Le même jugement qui aura prononcé les peines contre les complices de banqueroutes frauduleuses, les condamnera,

1° A réintégrer à la masse des créanciers, les biens, droits et actions frauduleusement soustraits.

2° A payer, envers ladite masse, des dommages-intérêts égaux à la somme dont ils ont tenté de la frauder.

Art. 599. Les arrêts des cours de justice criminelle contre les banqueroutiers et leurs complices, seront affichés et de plus insérés dans un journal, conformément à l'article 683. du code de procédure civile.

### CHAPTER III.

#### DE L'ADMINISTRATION DES BIENS EN CAS DE BANQUEROUTE.

Art. 600. Dans tous les cas de poursuites et de condamnations en banqueroute simple ou en banqueroute frauduleuse, les actions civiles, autres que celles dont il est parlé dans l'art. 598. resteront séparées, et toutes les dispositions relatives aux biens, prescrites pour la faillite, seront exécutées sans qu'elles puissent être attirées, attribuées ni évoquées aux tribunaux de police correctionnelle ni aux cours de justice criminelle.

Art. 601. Seront cependant tenus les syndics de la faillite, de remettre aux procureurs impériaux et à leurs substituts, toutes les pièces, titres, papiers et renseignements qui leur seront demandés.

Art. 602. Les pièces, titres, et papiers délivrés par les syndics, seront, pendant le cours de l'instruction, tenus en état de communication par la voie du greffe; cette communication aura lieu sur la réquisition des syndics, qui pourront y prendre des extraits privés ou en requérir d'officiels qui leur seront expédiés par le greffier.

Art. 598. Besides the punishments ordained against the accomplices in fraudulent bankruptcy, they shall also be adjudged,

1st. To restore to the general fund of the creditors, the property, rights and claims fraudulently obtained.

2d. To pay into the said fund, a sum in damages equal to that of which they attempted to defraud it.

Art. 599. The sentences of the courts of criminal judicature, against bankrupts and their accomplices, shall be posted up, and published in a newspaper, conformably to the directions in article 683. of the code of civil procedure.

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### CHAPTER III.

#### OF THE ADMINISTRATION OF THE PROPERTY IN CASE OF BANKRUPTCY.

Art. 600. In every case of prosecution and conviction, either of simple or fraudulent bankruptcy, all civil actions, other than those mentioned in article 598. shall remain separate and distinct from the criminal proceedings, and all the provisions relative to the property, enacted in cases of failure, shall be executed independently, and without the control or influence of the tribunals of correctional police, or the courts of criminal judicature.(65)

Art. 601. The assignees of the insolvent's estate shall, however, be bound to deliver to the imperial prosecutors, and their deputies, all the exhibits, documents, papers, and information which they may require.

Art. 602. The exhibits, documents, and papers delivered by the assignees, shall, during the prosecution, be kept for communication in the clerk's office; this communication shall be made at the request of the assignees, who may take private extracts from them, or demand official ones, which shall be furnished by the clerk.

Art. 603. Lesdites, pièces, titres, et papiers, seront, après le jugement, remis aux syndics, qui en donneront décharge; sauf néanmoins les pièces dont le jugement ordonnerait le dépôt judiciaire.

## TITRE V.

### *De la Réhabilitation.*

Art. 604. Toute demande en réhabilitation, de la part du failli, sera adressée à la cour d'appel dans le ressort de laquelle il sera domicilié.

Art. 605. Le demandeur sera tenu de joindre à sa pétition les quittances et autres pièces justifiant qu'il a acquitté intégralement toutes les sommes par lui dues en principal, intérêts et frais.

Art. 606. Le procureur général de la cour d'appel, sur la communication qui lui aura été faite de la requête, en adressera des expéditions, certifiées de lui, au procureur impérial près le tribunal d'arrondissement, et au président du tribunal de commerce du domicile du pétitionnaire; et s'il a changé de domicile depuis la faillite, au tribunal de commerce dans l'arrondissement duquel elle a eu lieu, en les chargeant de recueillir tous les renseignements qui seront à leur portée, sur la vérité des faits qui auront été exposés.

Art. 607. A cet effet, à la diligence tant du procureur impérial que du président du tribunal de commerce, copie de ladite pétition restera affichée pendant un délai de deux mois, tant dans les salles d'audience de chaque tribunal, qu'à la bourse et à la maison commune, et sera insérée par extraits dans les papiers publics.

Art. 608. Tout créancier qui n'aura pas été payé intégralement de sa créance en principal, intérêts et frais, et tout autre partie

Art. 603. The said exhibits, documents, and papers shall, after the judgment, be returned to the assignees, who shall give a receipt for the same; excepting, however, such as shall be ordered by the court to remain in the office.

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## TITLE V.

### *Of Restoration.*

Art. 604. Every demand of restoration to former rights and privileges, on the part of the insolvent, shall be addressed to the court of appeal, within whose jurisdiction he is domiciled.

Art. 605. The demandant shall be required to join to his petition, the acquittances and other documents, in proof of his having fully satisfied all his creditors, in principal, interest, and costs.

Art. 606. The attorney-general of the court of appeal, on the communication which shall be made to him of the petition, shall transmit copies of it, certified by him, to the imperial prosecutor of the tribunal of the district, and to the president of the tribunal of commerce of the domicile of the petitioner; and if he has changed his domicile since the failure, to the tribunal of commerce in the district where it took place, requiring them to collect all the information within their reach, on the truth of the facts stated in the petition.

Art. 607. For this purpose, at the instance as well of the imperial prosecutor, as of the president of the tribunal of commerce, a copy of the said petition shall remain posted up, for the space of two months, in the audience-room of each tribunal, at the exchange, and in the town-house, and an abstract of the same published in the newspapers.

Art. 608. Any creditor who shall not have been fully paid his demand, with interest and costs, and any other party interested,

intéressée, pourront, pendant la durée de l'affiche, former opposition à la réhabilitation, par simple acte au greffe, appuyé de pièces justificatives, s'il y a lieu. Le créancier opposant ne pourra jamais être partie dans la procédure tenue pour la réhabilitation, sans préjudice toutefois de ses autres droits.

Art. 609. Après l'expiration des deux mois, le procureur impérial et le président du tribunal de commerce transmettront chacun séparément, au procureur général de la cour d'appel, les renseignements qu'ils auront recueillis, les oppositions qui auront pu être formées, et les connaissances particulières qu'ils auraient sur la conduite du failli; ils y joindront leur avis sur sa demande.

Art. 610. Le procureur général de la cour d'appel sera rendre, sur le tout, arrêt portant admission ou rejet de la demande en réhabilitation; si la demande est rejetée, elle ne pourra plus être reproduite.

Art. 611. L'arrêt portant réhabilitation sera adressé tant au procureur impérial qu'au président des tribunaux auxquels la demande aura été adressée. Ces tribunaux en feront faire la lecture publique et la transcription sur leurs registres.

Art. 612. Ne seront point admis à la réhabilitation, les stationnaires, les banqueroutiers frauduleux, les personnes condamnées pour fait de vol ou d'escroquerie, ni les personnes comptables, tels que les tuteurs, administrateurs ou dépositaires, qui n'auront pas rendu ou apuré leurs comptes.

Art. 613. Pourra être admis à la réhabilitation, le banqueroutier simple qui aura subi le jugement par lequel il aura été condamné.

Art. 614. Nul commerçant failli ne pourra se présenter à la bourse à moins qu'il n'ait obtenu sa réhabilitation.

may, during the publication, oppose the restoration, by a simple declaration at the clerk's office, supported by testimonial documents, if there be cause. The opposing creditor can never be a party in the proceedings instituted for the restoration; his other rights, however, shall not thereby be impaired.

Art. 609. After the expiration of two months, the imperial prosecutor and the president of the tribunal of commerce, shall each transmit, separately, to the attorney-general of the court of appeal, the information which they shall have collected, the oppositions which may have been made, and the particular knowledge which they may have obtained, in regard to the conduct of the insolvent; they shall add to the same their opinion on his petition.

Art. 610. The attorney-general of the court of appeal shall cause to be rendered, on a review of the whole case, a decree in favour of the admission or rejection of the demand of restoration; if the demand be rejected, it can never again be renewed.

Art. 611. If the decree be in favour of restoration, it shall be addressed to the imperial prosecutor, and to the presidents of the tribunals which had cognizance of the demand. These tribunals shall cause a decree to be publicly read, and recorded on their registers.

Art. 612. Persons guilty of stellionate, fraudulent bankrupts, persons convicted of theft or swindling, or those who are accountable to others, such as guardians, administrators, or depositaries, and who have not rendered or adjusted their accounts, shall not be admitted to the benefit of restoration.

Art. 613. Persons convicted of simple bankruptcy, may be admitted to restoration, if they have suffered the punishment pronounced against them.

Art. 614. No merchant who has failed shall appear on the exchange, unless he has obtained his restoration.(66)

## LIVRE IV.

### DE LA JURIDICTION COMMERCIALE.

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#### TITRE PREMIER.

##### *De l'Organisation des Tribunaux de Commerce.*

Art. 615. UN règlement d'administration publique déterminera le nombre des tribunaux de commerce, et les villes qui seront susceptibles d'en recevoir par l'étendue de leur commerce et de leur industrie.

Art. 616. L'arrondissement de chaque tribunal de commerce sera le même que celui du tribunal civil dans le ressort duquel il sera placé; et s'il se trouve plusieurs tribunaux de commerce dans le ressort d'un seul tribunal civil, il leur sera assigné des arrondissements particuliers.

Art. 617. Chaque tribunal de commerce sera composé d'un juge-président, de juges et de suppléants. Le nombre des juges ne pourra pas être au-dessous de deux, ni au-dessus de huit, non compris le président. Le nombre des suppléants sera proportionné au besoin du service. Le règlement d'administration publique fixera, pour chaque tribunal, le nombre des juges et celui des suppléants.

Art. 618. Les membres des tribunaux de commerce seront élus dans une assemblée composée de commerçants notables, et principalement des chefs des maisons les plus anciennes et les plus recommandables par la probité, l'esprit d'ordre, et d'économie.



## BOOK IV.

### OF COMMERCIAL JURISDICTION.

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#### TITLE I.

##### *Of the Organization of the Tribunals of Commerce.*

Art. 615. THE number of tribunals of commerce, and the cities which, from the extent of their trade and industry require them, shall be determined by a regulation of public administration.

Art. 616. The district of each tribunal of commerce shall be the same as that of the civil tribunal, within whose jurisdiction it shall be established; and if several tribunals of commerce are found within the jurisdiction of a single civil tribunal, particular districts shall be assigned to them.

Art. 617. Each tribunal of commerce shall be composed of a judge-president, associate judges, and substitutes. The number of judges cannot be less than two, nor more than eight, exclusive of the president. The number of substitutes shall be proportionate to the public service. A regulation of public administration shall fix the number of judges and of substitutes for each tribunal.

Art. 618. The members of the tribunals of commerce shall be elected by an assembly composed of respectable merchants, and principally of the heads of the oldest houses, and the most estimable for probity, the spirit of order, and economy.

#### IV. Titre I.

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Art. 619. A list of the most respectable persons, among all the merchants of the district, shall be drawn up by the prefect, and certified by the minister of the interior: their number cannot be less than twenty-five, in cities where the population does not exceed fifteen thousand souls; in other cities, it must be increased at the rate of one elector for every thousand souls.

Art. 620. Every merchant may be appointed a judge, or substitute, if of the age of thirty years, and if he has carried on commerce with honour and distinction for five years. The president must be forty years old, and can only be chosen from among the former judges, including those who have been judges in the tribunals now established, and even the consular judges of merchants, under the old government.

Art. 621. The election shall be made by ballot, and determined by the majority of votes; and when the president is to be chosen, the special object of the election shall be made known previously to taking the votes.

Art. 622. At the first election, the president and half the number of the other judges and substitutes composing the tribunal, shall be chosen for two years; at the second, half the number of judges and substitutes shall be chosen for one year; at the subsequent elections, all the appointments shall be made for two years.

Art. 623. The president and the other judges cannot remain more than two years in office, nor be re-elected until after a year's interval.

Art. 624. There shall be attached to each tribunal of commerce, a clerk and bailiffs, appointed by the government; their salaries, fees, and duties, shall be fixed by a regulation of public administration.

Art. 625. There shall be established, for the city of Paris only, commercial guards for the execution of judgments involving personal imprisonment: the mode of their organization and their powers shall be determined by a special regulation.

Art. 626. The judgments of the tribunals of commerce shall be

ront rendus par trois juges au moins; aucun suppléant ne pourra être appelé que pour compléter ce nombre.

Art. 627. Le ministère des avoués est interdit dans les tribunaux de commerce, conformément à l'article 414. du code de procédure civile; nul ne pourra plaider pour une partie devant ces tribunaux, si la partie, présente à l'audience, ne l'autorise, ou s'il n'est muni d'un pouvoir spécial. Ce pouvoir, qui pourra être donné au bas de l'original ou de la copie de l'assignation, sera exhibé au greffier avant l'appel de la cause, et par lui visé sans frais.

Art. 628. Les fonctions des juges de commerce sont seulement honorifiques.

Art. 629. Ils prêtent serment avant d'entrer en fonctions, à l'audience de la cour d'appel, lorsqu'elle siège dans l'arrondissement communal où le tribunal de commerce est établi; dans le cas contraire, la cour d'appel commet, si les juges de commerce le demandent, le tribunal civil de l'arrondissement pour recevoir leur serment; et dans ce cas, le tribunal en dresse procès-verbal, et l'envoie à la cour d'appel, qui en ordonne l'insertion dans ses registres. Ces formalités sont remplies sur les conclusions du ministère public, et sans frais.

Art. 630. Les tribunaux de commerce sont dans les attributions et sous la surveillance du grand-juge ministre de la justice.

pronounced by three judges at least; no substitute can assist in them, except to complete the number.

**Art. 627.** The assistance of advocates is prohibited in the tribunals of commerce, conformably to article 414. of the code of civil procedure; no person can plead for either party before these tribunals, unless authorized by the party, in open court, or invested with a special warrant of attorney, for that purpose. This warrant of attorney, which may be given at the bottom of the original, or the copy of the citation, shall be exhibited to the clerk before the trial of the cause, and by him attested, without expense.

**Art. 628.** The functions of the commercial judges are entirely honorary.

**Art. 629.** They are sworn before entering on the duties of their office, at the audience of the court of appeal, when it is held in the municipal district in which the tribunal of commerce is established; when that is not the case, the court of appeal, if the commercial judges require it, empower the civil tribunal of the district to administer the oath; and in this case, the tribunal draw up a report of the same, and transmit it to the court of appeal, who order it to be recorded on their registers. These formalities are observed, at the instance and under the directions of the public authority, and without costs.

**Art. 630.** The tribunals of commerce are within the jurisdiction, and under the superintendence, of the grand judge minister of justice.

## TITRE II.

### *De la Compétence des Tribunaux de Commerce.*

**Art. 631.** Les tribunaux de commerce connaîtront,

1° De toutes contestations relatives aux engagements et transactions entre négociants, marchands et banquiers.

2° Entre toutes personnes, des contestations relatives aux actes de commerce.

**Art. 632.** La loi répute actes de commerce,

Tout achat de denrées et marchandises pour les revendre, soit en nature, soit après les avoir travaillées et mises en œuvre, ou même pour en louer simplement l'usage.

Toute entreprise de manufactures, de commission, de transport par terre ou par eau.

Toute entreprise de fournitures, d'agence, bureaux d'affaires, établissements de ventes à l'encan, de spectacles publics.

Toute opération de change, banque et courtage.

Toutes les opérations des banques publiques.

Toutes obligations entre négociants, marchands et banquiers.

Entre toutes personnes, les lettres de change ou remises d'argent faites de place en place.

**Art. 633.** La loi répute pareillement actes de commerce,

Toute entreprise de construction, et tous achats, ventes et reventes de bâtiments pour la navigation intérieure et extérieure.

Toutes expéditions maritimes.

Tout achat ou vente d'agrès, apparaux et avitaillements.

Tout affrètement ou nolisement, emprunt ou prêt à la grosse; toutes assurances et autres contrats concernant le commerce de mer.

Tous accords et convention pour salaires et loyers d'équipages.

## TITLE II.

### *Of the Competency of the Tribunals of Commerce.*

Art. 631. The tribunals of commerce shall take cognizance,  
1st. Of all controversies relative to the engagements and transactions between merchants, shopkeepers, and bankers.

2d. Of all controversies relative to commercial acts, between persons of any description.

Art. 632. The law recognises, as commercial acts,

Every purchase of merchandise or produce, in order to be sold again, whether in its natural state, or after undergoing some change by labour and art, or even in order simply to let out the use of it.

Every enterprise of manufactures, of commission, of transportation by land or water.

Every contract to furnish provisions or merchandise, every undertaking of agency, or general business, establishments of auctions and theatrical exhibitions.

Every operation of exchange, banking, and brokerage.

All the operations of public banks.

All contracts between merchants, shopkeepers, and bankers.

Remittances of bills of exchange, or of money, from place to place, between persons of any description.

Art. 633. The law likewise recognises, as commercial acts,

All contracts for the building, the purchase, sale and resale of vessels for foreign and inland navigation.

All maritime shipments.

All the purchases or sales of rigging, apparel, and provisions.

All contracts for freight, bottomry, and respondentia loans, insurance, and other contracts concerning maritime commerce.

All agreements and stipulations for the pay and wages of ships' crews.

Tous engagements de gens de mer, pour le service de bâtiments de commerce.

Art. 634. Les tribunaux de commerce connaîtront également,

1° Des actions contre les facteurs, commis des marchands ou leurs serviteurs, pour le fait seulement du trafic du marchand auquel ils sont attachés.

2° Des billets faits par les receveurs, payeurs, percepteurs ou autres comptables des deniers publics.

Art. 635. Ils connaîtront enfin,

1° Du dépôt du bilan et des registres du commerçant en faillite, de l'affirmation et de la vérification des créances.

2° Des oppositions au concordat, lorsque les moyens de l'opposant seront fondés sur des actes ou opérations dont la connaissance est attribuée par la loi aux juges des tribunaux de commerce.

Dans tous les autres cas, ces oppositions seront jugées par les tribunaux civils.

En conséquence, toute opposition au concordat contiendra les moyens de l'opposant, à peine de nullité.

3° De l'homologation du traité entre le failli et ses créanciers ;

4° De la cession de biens faite par le failli, pour la partie qui en est attribuée aux tribunaux de commerce par l'art. 901. du code de procédure civile.

Art. 636. Lorsque les lettres de change ne seront réputées que simples promesses aux termes de l'article 112. ou lorsque les billets à ordre ne porteront que des signatures d'individus non négociants, et n'auront pas pour occasion des opérations de commerce, trafic, change, banque ou courtage, le tribunal de commerce sera tenu de renvoyer au tribunal civil, s'il en est requis par le défendeur.

Art. 637. Lorsque ces lettres de change et ces billets à ordre porteront en même temps des signatures d'individus négociants et



All engagements of seamen, in the service of merchant vessels.

Art. 634. The tribunals of commerce shall also take cognizance,

1st. Of actions against factors, merchants' clerks, or other persons engaged in their service, for acts relative solely to the trade of the merchant by whom they are employed.

2d. Of promissory notes given by the receivers, payers, collectors, or other persons accountable for public money.

Art. 635. Finally, they shall take cognizance,

1st. Of the delivery of the balance-book and registers of an insolvent merchant, and of the proof and verification of the debts.

2d. Of the oppositions to the compromise between the insolvent and his creditors, when the objections are founded on acts or operations within the jurisdiction granted by the law to the judges of the tribunals of commerce.

In every other case, these oppositions shall be decided by the civil tribunals.

Consequently, every opposition to the compromise shall state the grounds of objection on the part of the opposer; otherwise it shall be null and void.

3d. Of the confirmation of the compromise between the insolvent and his creditors.

4th. Of the assignment of the insolvent's estate, in respect to that part of it which comes within the jurisdiction of the tribunals of commerce, conformably to article 901. of the code of civil procedure.

Art. 636. When bills of exchange are reputed to be only simple promises, according to the provisions of article 112., or when promissory notes bear only the signatures of individuals not merchants, and were not given on account of the operations of commerce, traffic, exchange, banking, or brokerage, the tribunal of commerce shall be bound to remit the cause to the civil tribunal, if it be required by the defendant.

Art. 637. When these bills of exchange and promissory notes bear, at the same time, the signatures of individuals who are

d'individus non négociants, le tribunal de commerce en connaîtra ; mais il ne pourra prononcer la contrainte par corps contre les individus non négociants, à moins qu'ils ne se soient engagés à l'occasion d'opérations de commerce, trafic, change, banque ou courtage.

Art. 638. Ne seront point de la compétence des tribunaux de commerce, les actions intentées contre un propriétaire, cultivateur ou vigneron, pour vente de denrées provenant de son cru, les actions intentées contre un commerçant, pour paiement de denrées et marchandises achetées pour son usage particulier.

Néanmoins, les billets souscrits par un commerçant seront censés faits pour son commerce, et ceux des receveurs, payeurs, percepteurs ou autres comptables de deniers publics, seront censés faits pour leur gestion, lorsqu'une autre cause n'y sera point énoncée.

Art. 639. Les tribunaux de commerce jugeront en dernier ressort,

1° Toutes les demandes dont le principal n'excèdera pas la valeur de 1000 franc.

2° Toutes celles où les parties justiciables de ces tribunaux, et usant de leurs droits, auront déclaré vouloir être jugées définitivement et sans appel.

Art. 640. Dans les arrondissements où il n'y aura pas de tribunaux de commerce, les juges du tribunal civil exerceront les fonctions et connaîtront des matières attribuées aux juges de commerce par la présente loi.

Art. 641. L'instruction, dans ce cas, aura lieu dans la même forme que devant les tribunaux de commerce, et les jugements produiront les mêmes effets.

merchants, and of those who are not merchants, the tribunal of commerce shall take cognizance of them; but it cannot adjudge personal imprisonment against the individuals not merchants, unless they have engaged themselves on account of some operations of commerce, traffic, exchange, banking, or brokerage.

Art. 638. The tribunals of commerce shall not have jurisdiction of actions brought against landholders, cultivators, or farmers, for the sale of the produce of their own growth, nor of actions brought against a merchant for the payment of the provisions and goods bought for his private use.

Nevertheless, the promissory notes signed by a merchant, shall be presumed to have been made on account of his commercial transactions, and those made by the receivers, paymasters, collectors, and other accountable public agents, shall be considered as given in the course of their official business, when no other cause is expressed in the notes.

Art. 639. The tribunals of commerce shall give final judgment, without appeal,

1st. In all causes where the sum in controversy shall not exceed a thousand francs, (200 dollars.)

2d. In all those where the parties, justiciable by these courts, and making use of their rights, shall have declared their consent to be definitively judged, and without appeal.

Art. 640. In the districts where there are no tribunals of commerce, the judges of the civil tribunals shall perform the functions, and take cognizance of the matters, within the jurisdiction of the commercial judges, according to the present law.

Art. 641. The proceedings, in that case, shall be conducted in the same mode as practised before the tribunals of commerce, and the judgments shall have the same force and effect.

### TITRE III.

#### *De la Forme de procéder devant les Tribunaux de Commerce.*

Art. 642. La forme de procéder devant les tribunaux de commerce sera suivie, telle qu'elle a été réglée par le Titre XXV. du Livre II. de la 1<sup>re</sup> partie du code de procédure civile.

Art. 643. Néanmoins, les articles 156. 158. et 159. du même code, relatifs aux jugements par défaut rendus par les tribunaux inférieurs, seront applicables aux jugements par défaut rendus par les tribunaux de commerce.

Art. 644. Les appels des jugements de tribunaux de commerce seront portés par-devant les cours dans le ressort desquelles ces tribunaux sont situés.

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### TITRE IV.

#### *De la Forme de procéder devant les Cours d'Appel.*

Art. 645. Le délai pour interjeter appel des jugements des tribunaux de commerce, sera de trois mois, à compter du jour de la signification du jugement, pour ceux qui auront été rendus contradictoirement, et du jour de l'expiration du délai de l'opposition, pour ceux qui auront été rendus par défaut : l'appel pourra être interjeté le jour même du jugement.

Art. 646. L'appel ne sera pas reçu lorsque le principal n'excèdera pas la somme ou la valeur de 1000 fr. encore que le jugement n'énonce pas qu'il est rendu en dernier ressort, et même quand il énoncerait qu'il est rendu à la charge de l'appel.

### **TITLE III.**

#### *Of the Mode of Proceeding before the Tribunals of Commerce.*

Art. 642. The mode of proceeding before the tribunals of commerce shall be conformable to the regulations established by the code of civil procedure, Part I. Book II. Title XXV.

Art. 643. Nevertheless, the articles 156. 158. and 159. of that code, relative to judgments by default, rendered by the inferior tribunals, shall be applicable to judgments by default, rendered by the tribunals of commerce.

Art. 644. Appeals from the judgments of the tribunals of commerce shall be carried before the courts, within whose jurisdiction those tribunals are respectively situated.

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### **TITLE IV.**

#### *Of the Mode of Proceeding before the Courts of Appeal.*

Art. 445. The term allowed for interposing an appeal from the judgments of the tribunals of commerce, shall be three months, to be computed from the day of the notification of the judgment, in the case of final judgments, on hearing both parties, and from the day of the expiration of the time allowed for opposition, in the case of judgments by default. The appeal may be put in on the very day on which the judgment is rendered.

Art. 646. The appeal shall not be received, when the principal sum in controversy does not exceed the amount or value of 1,000 francs, (200 dollars,) although the judgment should not state that it was rendered without appeal, and even when it should mention that it was given subject to appeal.

**Art. 647.** Les cours d'appel ne pourront, en aucun cas, à peine de nullité, et même des dommages-intérêts des parties, s'il y a lieu, accorder des défenses ni surseoir à l'exécution des jugements des tribunaux de commerce, quand même ils seraient attaqués d'incompétence; mais elles pourront, suivant l'exigence des cas, accorder la permission de citer extraordinairement à jour et heure fixés, pour plaider sur l'appel.

**Art. 648.** Les appels des jugements des tribunaux de commerce seront instruits et jugés dans les cours, comme appels de jugement rendus en matière sommaire. La procédure, jusques et y compris l'arrêt définitif, sera conforme à celle qui est prescrite, pour les causes d'appel en matière civile, au Livre III. de la 1<sup>re</sup>. partie du code de procédure civile.

Art. 647. The courts of appeal cannot, in any case, on pain of nullity, and even of damages towards the parties, if there be cause, grant prohibitions or delays in the execution of the judgments of the tribunals of commerce, even though they should be opposed on the ground of the incompetency of those tribunals; but they may, according to the exigency of the case, grant a special citation, for a certain day and hour, to hear the parties on the appeal.

Art. 648. The appeals from the judgments of the tribunals of commerce shall be brought on and decided in the courts, in the manner of appeals from judgments in summary causes. The proceedings in the prosecution of the appeal, until the final decree inclusively, shall be conformable to those prescribed for appeals in civil causes, in the code of civil procedure, Part I. Book III.

END OF THE COMMERCIAL CODE.

## LOI

**QUI FIXE L'EPOQUE A LAQUELLE LE CODE DE COMMERCE  
SERA EXECUTOIRE.**

*(Du 15 Septembre, 1807.)*

**NAPOLÉON, par la grace de Dieu et les constitutions, EMPEREUR DES FRANÇAIS, ROI D'ITALIE, et PROTECTEUR DE LA CONFÉDÉRATION DU RHIN, à tous présents et à venir SALUT.**

**LE CORPS LÉGISLATIF a rendu, le 15 Septembre, 1807, le décret suivant, conformément à la proposition faite au nom de l'empereur, et après avoir entendu les orateurs du conseil d'état et des sections du tribunal, le même jour.**

## DECRET.

**Art. 1. Les dispositions du code de commerce ne seront exécutées qu'à compter du 1<sup>er</sup> Janvier, 1808.**

**Art. 2. A dater dudit jour 1<sup>er</sup> Janvier, 1808, toutes les anciennes lois touchant les matières commerciales sur lesquelles il est statué par ledit code, sont abrogées.**

**Collationné à l'original, par nous président et secrétaires du corps législatif. Paris, le 15 Septembre, 1807. Signé FONTANES, Président ; J. V. DUMOLARD, MICHELET-ROCHEMONT, CHAPUIS, MILSCENT, Secrétaires.**

**MANDONS et ordonnons que les présentes, revêtues des sceaux de l'état, insérées au bulletin des lois, soient adressées aux cours, aux tribunaux et aux autorités administratives, pour qu'ils les in-**



## **LAW**

### **FIXING THE PERIOD AT WHICH THE COMMERCIAL CODE SHALL COMMENCE ITS OBLIGATORY FORCE.**

*(Enacted the 15th of September, 1807.)*

**NAPOLÉON**, by the Grace of God and the constitutions, **EMPEROR OF THE FRENCH, KING OF ITALY, AND PROTECTOR OF THE CONFEDERATION OF THE RHINE**, to all present and to come, **GREETING.**

**THE LEGISLATIVE BODY**, on the 15th of September, 1807, rendered the following decree, conformably to the proposition made in the name of the emperor, and after having heard the orators of the council of state and of the sections of the tribunate, on the same day.

### **DECREE.**

**Art. 1.** The provisions of the commercial code shall be in force from the 1st of January, 1808.

**Art. 2.** From the said date of the 1st of January, 1808, all the former laws concerning commercial matters, which are the subject of the present code, are repealed.

Compared with the original, by us president and secretaries of the legislative body. Paris, the 15th of September, 1807.

*Signed FONTANES, President ; J. V. DUMOLARD, MICHELET-ROCHEMONT, CHAPPUIS, MILSCENT, Secretaries.*

**WE ORDER** and command that these presents, invested with the seals of the state, inserted in the bulletin of the laws, be transmitted to the courts and tribunals of justice, and to the admi-

scrivent dans leurs registres, les observent et les fassent observer; et notre grand-juge ministre de la justice est chargé d'en surveiller la publication.

Donné en notre palais impérial de Fontainebleau, le 25 Septembre, 1807.

Signé **NAPOLÉON,**

*Vu par nous Archi-Chancelier de l'Empire,*

Signé **CAMBACÈRES.**

Par l'Empereur :

*Le Grand-Juge Ministre  
de la Justice,*

Signé **RÉGNIER.**

*Le Ministre Secrétaire  
d'Etat,*

Signé **HUGUES B. MARET.**

Certifié conforme :

*Le Grand-Juge Ministre  
de la Justice,*  
**RÉGNIER.**

nistrative authorities, in order that they record them on their registers, observe them, and cause them to be observed; and our grand-judge minister of justice is charged to superintend their publication.

Given in our imperial palace at Fontainebleau, the 25th of September, 1807.

Signed

NAPOLEON.

*Attested by us Arch-Chancellor of the Empire,*

Signed

CAMBACERES.

By the Emperor.

*The Grand-Judge Minister*

*of Justice,*

Signed REGNIER.

*The Minister Secretary*

*of State,*

Signed HUGUES B. MARTE.

Certified conformable:

*The Grand-Judge Minister of Justice,*

REGNIER.



NOTES,  
REFERRED TO IN THE TEXT  
OF THE  
TRANSLATION OF THE CODE.

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(1) Page 87. *Emancipated minor.* Filial emancipation prevailed in France before the revolution, under various modifications. See *Dict. de Droit, par Ferrière*. It was borrowed from the civil law. See *Institutes*, Lib. 1. Tit. 12.

The Code Napoleon, Book I. Title X. Chap. III. contains several provisions on this subject. It declares that a minor is absolutely emancipated by marriage; that if not married, he may be emancipated by his parents, at the age of fifteen years, which is effected by a simple declaration made before a justice of the peace; that if he has neither father nor mother, he may be emancipated, at the age of eighteen years, by the family council. The minor, by emancipation, becomes entitled to the management of his estate, and may make leases for a term not exceeding nine years, receive his revenue, and do every other act which relates merely to the administration of his property; but he cannot prosecute or defend a real action, without the concurrence of his guardian; nor borrow money without the authorization of the family council, confirmed by the tribunal; nor sell or alienate his real estate. His personal obligations, if he be not engaged in commerce, may be reduced or annulled by the tribunals, whenever they are not beneficial to him, and it should appear that deception or fraud had

been practised upon him. By the English law filial emancipation is recognised chiefly in relation to the parochial settlement of paupers. See 3 Term Rep. 355. 6 Term Rep. 247. 8 Term Rep. 479. 2 East, 276. 10 East, 88.

(2) Page 87. *Interdiction* is a legal disqualification, pronounced by a competent tribunal, on account of imbecility, madness, or prodigality, and deprives the person interdicted of the right to manage his affairs and receive the rents and profits of his estate. See Code Napoleon, Book I. Tit. XI. Chap. II.

(3) Page 87. The *family council* is composed of the nearest relations, to the number of six, and in some instances, to make up that number, of the friends of minors and persons who are *non compos*, or prodigals, for the purpose of appointing tutors and guardians, and superintending the administration of their estates. See Code Napoleon, Book I. Tit. X. Chap. II.

(4) Page 89. *Communauté de biens* is a partnership in property between husband and wife, stipulated in the marriage contract, or resulting from the operation of law. It was unknown to the Roman law; hence, when not authorized by a previous agreement between the parties, it prevailed in France, under the old government, only in certain provinces, where the customary or unwritten law was in force. It was there derived from an ancient law of the Gauls called the *jus collaborationis*. See *Dict. de Droit, par Ferrière*. The Code Napoleon has recognised this species of conjugal partnership, Book III. Tit. V. Chap. II. wherein a great variety of provisions on the subject are ordained.

(5) Page 89. The *dotal regulation*, under which a marriage may take place, is established in the Code Napoleon, Book III. Tit. V. Chap. III. It secures to the wife, unless a contrary stipulation be made in the marriage contract, all her *dotal property*, that is, all her private property previous to the marriage, and, in some instances, what may come to her after the marriage by donation or inheritance; also her marriage portion. The husband has, however, the administration of the dotal property, and may enjoy the rents and profits, though a contrary stipulation may be made in the marriage contract. The real estate, constituted as

dotal, cannot be alienated nor mortgaged by either the husband or wife, except for the establishment of children; but the alienation may be authorized by the marriage contract, and the property may also be sold, under the authority of the court, for certain purposes, as the liberation of the husband or wife from imprisonment; the maintenance of the family in certain cases; the payment of the debts of the wife contracted previous to the marriage; to make indispensable reparation to preserve the real estate; also, when the dotal property is found to be undivided with third persons in such a manner that partition cannot be made without a sale. The husband is under all the obligations of a trustee in regard to the dotal property; he is answerable for prescription, waste, &c. In case of the dissolution of the marriage, the husband or his heirs and legal representatives, are bound to restore all the dotal property to the wife or her heirs. The creditors of the husband cannot touch the dotal property.

(6) Page 91. *Marked and certified.* This is done by a magistrate, by affixing a kind of flourish, (*paraphe*), such as is usually added to signatures.

(7) Page 93. A *rogatory commission* is a commission given by a judge of a court in one district and addressed to a judge in a different district, requesting him to do some act, or make some order in relation to a matter within the jurisdiction of the latter.

(8) Page 93. The *civil law* here meant, is the law of the Code Napoleon, in contradistinction to the commercial law of this code. It differs widely from the *Roman law*, or what is vulgarly called the *civil law*, in many very important points. See Code Napoleon, Book III. Tit. IV. concerning partnerships.

(9) Page 93. *Commandite* partnerships are peculiar to the continent of Europe. They are found very useful in forming large establishments, in which a great capital may be profitably employed, without involving an unlimited risk. The nature and conditions of this kind of association are so well defined in the text, that little need be added in the way of explanation; those, however, who are curious to know all the particulars of the nature and origin of this sort of partnership, will find the subject

treated of at considerable length, in *le Dictionnaire de Commerce, par Savary*, a work of uncommon merit and research.

(10) Page 97. *Private signature.* This means nothing more than the private handwriting of the parties, not acknowledged before a notary or other public officer. There is no such distinction as that which prevails in the English law, between *parol* contracts in writing, and specialties, or instruments under seal. The only difference that exists in France, in regard to contracts or other instruments of writing, is, that sometimes they are merely signed by the parties, and then they are said to be under *private signature*. At other times, in order to give greater efficacy to them, they are executed before a notary or other public officer, and authenticated by him; they are then called public acts, or acts passed or acknowledged before a notary.

(11) Page 97. The Code Napoleon, article 1325. declares, that instruments under private signature, which contain mutual covenants, are not valid unless made in as many originals as there are parties to the contract, having a distinct interest.

One original is sufficient for all the persons having the same interest.

Every original must express the number of originals made.

Nevertheless, the omission to mention that the originals were made in duplicates, triplicates, &c. cannot be taken advantage of, by the party who has performed the covenants by which he was bound in the instrument.

(12) Page 99. By article 1341. of the Code Napoleon, it is declared, that all contracts or engagements involving a sum or value exceeding one hundred and fifty francs, (about 30 dollars,) must be in writing under private signature, or acknowledged before a notary.

(13) Page 103. *Courts of appeal.* There is a court of appeal in every department of France, composed of from twelve to thirty judges, according to the extent of population and jurisdiction. These courts revise the judgments of the inferior tribunals. The judges are appointed for life. There is also a final court of appeal, called the *court of cassation*, whose jurisdiction extends



throughout the whole empire. Its object is the correction of errors in matters of law and practice, and in the jurisdiction of the inferior courts. It is composed of a president, two vice presidents, and fifty other judges, all of whom are appointed for life.

(14) Page 105. It generally happens in France, as in this, and perhaps every other country, that on the dissolution of a partnership, some one or more of the partners are appointed to settle the accounts, collect and pay the debts. These are called *liquidateurs*; and as they are presumed to be in possession of the funds of the partnership, and to have undertaken to pay the debts, they are not permitted to avail themselves of the limitation of time, declared in favour of the other partners, who are called *non-liquidateurs*.

(15) Page 105. *Separation of property.* A marriage may be contracted in France, with a stipulation that the property of each party shall be separately enjoyed; and in that case, the wife preserves the entire administration of her estate, real and personal, and the free enjoyment of her revenue. Each of the parties contributes to the household expenses, according to the terms of their marriage contract; and when no agreement has been made, in that respect, the wife pays to the extent of one third of her income. But in no case, nor under any stipulation, is she permitted to alienate her real property, without the special consent of her husband, or, in case of his refusal, in virtue of judicial authority. See Code Napoleon, Book III. Title V. Chap. II.

(16) Page 113. *Bankrupt.* The French law makes a very proper distinction between an insolvent debtor and a bankrupt. The former is regarded as perfectly innocent, though unfortunate; the latter, however unfortunate, is always considered as guilty of either gross misconduct or fraud, and is punished accordingly, as will be seen in the third book of this code.

(17) Page 123. Article 1312. of the Code Napoleon declares, that when minors, interdicted persons, or married women, are admitted, in these qualities, to plead in bar to their engagements, the reimbursement of any money which may have been paid to their use, during the minority, interdiction, or marriage, cannot

be obtained, unless it be proved that the sums paid have been beneficial to them.

(18) Page 127. *Domicil.* It is declared in the Code Napoléon, Book I. Title III. that the domicil of every Frenchman, in respect to the exercise of his civil rights, shall be in the place where he has his principal establishment ; but that in all contracts or other instruments of writing, the parties may elect a domicil for their execution, in a place different from the actual domicil of either of the parties, and in that case, all demands, notifications, and prosecutions, resulting from these contracts, must be made in the domicil therein elected.

(19) Page 131. By the provisions in the text, in regard to the endorsement of a bill of exchange, it appears, that what is called in the English law a *blank endorsement*, is not of the same validity in France as in England and in this country. To effect a complete transfer of the bill, the French law requires that the endorsement should be dated, express the value received, and to whom the transfer is made. With us, it is sufficient merely to write the name on the back of the bill ; but if we reflect upon the disputes, litigation, and fraud, which mere blank endorsements have occasioned, we must acknowledge the superior wisdom and foresight of this part of the French law.

(20) Page 131. The kind of guaranty called *aval*, mentioned in the text, is very common in France, but quite unusual in this country. It is generally written at the bottom of the bill, but may be given separately, and in either case would be equally binding on the surety, though for the debt of a third person, and though no consideration should be therein mentioned.

(21) Page 133. It was a question long unsettled among the jurists, and in the courts of France, how far the general principle of law, in regard to the transfer of property, should be applicable to bills of exchange. On the one hand, it was contended, that he who presented himself as the owner of a bill of exchange, should show that he came fairly and honestly by it, otherwise the payment would not discharge the acceptor. On the other hand, it was insisted, that the application of the rigid rules of law to this

kind of commercial security, would too much clog its general circulation, and embarrass the operations of commerce. The Code has decided the question, by adopting a rule which obviates both objections. The reasons on which this decision are founded, may be seen in the *Motives*, page 24. of this volume, to which the reader would do well to recur.

(22) Page 135. The tribunals in France are not so much confined to the strict technical letter of the law, in the enforcement of contracts, as the courts of common law in England and this country. As there are no distinct courts of chancery in the former country, the principles of equity form a part of the law of the land, and enter into the general administration of justice; hence, in certain cases, the judges would afford relief to the defendant, by granting further time for the performance of a contract: but, in regard to the payment of bills of exchange, they are expressly prohibited from mitigating the rigour of the law.

(23) Page 139. The prosecution of a surety is called, in the French law, an action of guaranty, which sufficiently indicates its nature and object. The civil law admitted of a much more extensive and exact division of actions than prevails in the common law of England. See Institutes, Lib. 4. Tit. 6. Dig. Lib. 44. Tit. 7. Cod. Lib. 4. Tit. 10, 11. Certain *formulae* for these different species of actions were originally adopted by the Romans, but these were afterwards abolished by the Emperor Constantine. See Cod. Lib. 2. Tit. 58. In France, actions at law take their name from the subject matter or quality of the controversy, but no particular forms in pleading are required. Suits are instituted by bill or memoir, much in the nature of our bills in chancery, though much less formal; after which the answer of the defendant is put in. The judges then proceed to examine and decide the cause, solely on its merits, unencumbered with the trammels of special pleading.

(24) Page 139. *Contre son cédant*, in the text of the original, means, literally, *against his assignor*; but it is conceived, that where there is no intermediate endorser, between the holder and the drawer, as where the payee is the holder, the notice required

to be given, and the period within which suit must be commenced, applies alike to the endorser and the drawer.

(25) Page 143. Attachments of this kind, to secure the eventual payment of debts, are much more frequent under the French than the English law. The severity of the latter seems more directed against the *person* than the *property* of the debtor—hence the English law has spent its force when personal arrest and imprisonment have taken place; whereas, in France, personal imprisonment for debt is not allowed, except for breach of *commercial* engagements, and then not till judgment be obtained.

The public policy of imprisonment for debt, in any case where fraud is not imputed, may well be doubted. It would seem that the property only should be answerable, where the breach of contract involves only a question of property. The subject is highly important and interesting: it deserves the serious consideration of every sound moralist, and every wise legislator. Dr. Johnson, who certainly was never charged with an overstrained indulgence for the frailties, the errors, or the vices of our nature, has most ably and eloquently argued this point. In Nos. 22. and 38. of the *Idler*, he has, I think, shown in the most clear and unanswerable manner, the absolute impolicy and injustice of confining, within the narrow and noisome walls of a prison, human beings, who are capable of adding very considerably to the productive labour of society.

(26) Page 147. No damages are allowed in France, nor, I believe, in any other part of Europe, on bills of exchange or promissory notes returned protested. The re-exchange, expenses, and interest, are considered a sufficient indemnity.

(27) Page 149. The declaration required in the text, on the part of the presumed debtor, who would avail himself of the lapse of time, as a bar to an action against him, results from the principles of equity which are incorporated in the French system of jurisprudence. Good faith ought to be the essence of all contracts, and why should a person be permitted to shelter himself behind a provision of law, without being compelled openly to show himself justly entitled to it, as well on the ground of the *letter* as of the

spirit of the law, which assuredly never could have intended to absolve the real debtor from the obligation of his contract?

(28) Page 151. The words *privileged debts* frequently occur in this code. They are debts, for which, from their nature, the creditors have a lien or mortgage on some property, real or personal, and, consequently, they have a preference over other debts, by priority of claim in the distribution of the proceeds of the objects on which the lien attaches.

(29) Page 153. The offices of maritime inscription are established for the purpose of enrolling seamen. It is in these offices that engagements are entered into between the master and the seamen. When the latter are shipped, as it is called with us, they sign the *role d'équipage*, which nearly corresponds with what we call the shipping articles.

(30) Page 155. By an instrument of writing having a certain date, is meant an instrument dated and certified by a notary or other public officer.

(31) Page 157. The sale by judicial authority takes place after seizure, and the expiration of a certain time allowed the defendant for the payment of the money. The seizure may be made by any creditor having a lien or mortgage on the property, or a judgment of record.

(32) Page 157. The word *procès verbal*, in the original, means nothing more nor less than a report of facts drawn up in writing. These reports are rendered necessary, in France, on a great variety of occasions, in order to preserve the evidence of facts and circumstances in a more authentic form than the uncertain recollection of witnesses. Parol testimony, being liable to error and misrepresentation, is but little regarded, when written evidence, taken down at the time, can be adduced; hence, the latter is much more generally used in the courts of justice in France than in those of England or this country.

(33) Page 157. A domicile for the performance of a contract, and the judicial proceedings which may result from a breach of it, may be elected by the parties in a different place from that of the residence of either of them. See Note 18.

(34) Page 159. By article 60. of the code of civil procedure, the mode of making judicial citations is regulated. The 9th paragraph declares, that when the party against whom any judicial proceeding is to take place, either lives in the French territory out of the continent of Europe, or in a foreign country, the citation must be delivered at the domicile of the public prosecutor of the tribunal which has cognizance of the cause, who will attest the original, and send a copy, in the first case, to the minister of marine, and in the second, to the minister of foreign relations.

(35) Page 161. The public sales, being made under judicial authority, are called adjudications.

(36) Page 161. In public sales judicially decreed, a small wax taper is lighted, and the bids are received till it is consumed and the light extinguished, when the article set up is struck off to the last bidder.

(37) Page 163. Demands of division (*demandes en distraction*) are claims made to a portion of the property seized, on the ground of a lien or mortgage by a privileged debt, or that the property does not wholly belong to the debtor or defendant in the attachment.

(38) Page 197. The lien on the goods for the freight does not authorize their detention in the ship, but they may be seized, under judicial authority, and held as security for the payment of the freight, from the moment they leave the ship to be landed.

(39) Page 207. How far the personal liberty and lives of human beings may become the subject matter of insurance, was once a moot question among the casuistical jurists of France. The Code leaves it, in part, still undecided, as the clause in the text to which this note refers, only embraces the loss of personal liberty which may be redeemed by ransom, and the lives of African slaves, which alone are susceptible of a valuation in money. See the *Motives*, page 42. and 43. of this volume.

(40) Page 211. In the enumeration of objects, in the text, which do not constitute an insurable interest, several things are comprised, which, under the English and American law, may be the subject matter of insurance. The French law rejects every

thing that bears the least resemblance to a wager; there must be a subject actually existing, and exposed to risk, to form the basis of a contract of insurance: otherwise it becomes a mere wager on the dangers of the sea, or the chances of trade. Although our law does not permit a wager policy strictly so called, yet it allows of insurance on an interest in expectancy, as freight to be earned, and the profits of a voyage.

With regard to wagers, generally, the Code Napoleon explicitly declares, that no action shall lie for their recovery in the tribunals of France. See Code Napoleon, Book III. Tit. XII. Chap. I. It is, indeed, difficult to reconcile our ideas of the solemnity and dignity of a tribunal of justice, with the suits which are constantly entertained in our courts for the recovery of bets. If one person should bet with another that the wind would blow to-morrow from the north, and it should happen to blow from the south, the wager would consequently be lost, and a suit might be instituted for the recovery of the money at stake, and judgment must be awarded. Our courts would be obliged to take cognizance of this action, though of a nature so perfectly futile, because it happens to be the law of England!—and we cannot yet be persuaded that we are capable of making laws for ourselves.

(41) Page 213. The article in the text concludes with a general clause comprising all maritime risks. The French term, *fortune de mer*, seems to embrace a wider range than the English expression *perils of the sea*, though, in the application of the law, it would probably be found necessary to bring the former to a more definite and exact meaning, as has been the case, in regard to the latter, in the English decisions. See Marshall on Insurance, 218.

(42) Page 213. The subject of deviation from the course of the voyage, forms the most embarrassing part of the law of insurance, as so much depends upon intention, combined with minute and various circumstances. The general rule, that any loss occasioned by the act of the insured, is not at the charge of the underwriter, admits of many modifications and exceptions. See Marshall, 183—212.

(43) Page 213. The direct reverse of this article is the English law; but upon what principle of reason or justice, it would be difficult to say.

(44) Page 215. This article also differs from the English law; for in such a case, under that law, no return of premium would be granted. It is laid down in the English books, supported by many adjudged cases, that the whole premium is acquired and due from the moment the risk has commenced, if it be *entire* and for *one entire* premium. Marshall, 661.

(45) Page 215. This is what is called a *double insurance*, and the rule laid down in the text was formerly adopted in England, but a different one now prevails under the English law. Instead of making the underwriters contribute to the extent of their respective subscriptions, in the order of the dates of the policies, and thus exonerating subsequent underwriters, when the sums previously subscribed cover the whole risk, the policies are all considered as making but *one insurance*.

They are all good to the extent of the value of the effects put in risk, and should the underwriters on one policy only, be sued and compelled to pay the whole amount, they may recover a ratable proportion from the underwriters on the other policies. See Marshall, 147—150.

(46) Page 219. The right of abandonment is carried to a greater length under the English, than the French law. The various and often contradictory decisions on this important branch of the law of maritime insurance, to be found in the English and American reports, cannot be accurately classed or reduced to any systematic form in the short compass of an ordinary note. Marshall, whose treatise on insurance is one of the most perspicuous and best digested works we have on any single branch of our law, has discussed the doctrine of abandonment, and exhibited its various bearings with great clearness and precision; I cannot, therefore, do better than to refer the student to his very valuable work, page 559—615. There is one variation between the French and the English law on this subject, which appears on the face of the text of this Code; it is this: to authorize abandonment under the French



law, the loss or damage to the subject matter insured, must amount to at least three fourths of its value ; whereas, by the English law, the loss or damage need be only one half the value of the property insured.

(47) Page 221. Here again the French law differs from the English. In the latter no fixed periods of time are established, within which abandonment must be made ; but it is required to be made within a *reasonable time*, after advice received of the loss. See Marshall, 589. What is *reasonable time* is considered partly a question of law and partly of fact. The jury are to find the facts, and the judges to determine the law on those facts—that is, they are to determine the law without having any positive or settled rule of law, by which to be guided. The various and shifting opinions of men, and the particular circumstances of every case, are to form the grounds of their decision.

It is easy to conceive that this mode of ascertaining what the law is, in any case of abandonment, must be altogether vague and uncertain—it leaves every thing in doubt and perplexity. The merchant never knows when he has complied with the law, in making his abandonment, because what *he* may think *reasonable time*, another may consider as quite *unreasonable*. People's ideas of what is reasonable differ as much as their opinions on any other subject. One man will say that twenty-four hours are *reasonable time*, another will require a week, a third, a month, or even six months, and thus a very important branch of insurance law is left quite unsettled, and becomes the source of endless disputes and litigation. I cannot, therefore, yield to the reasoning of the learned author of the work above cited, in regard to positive regulations, as to the time within which abandonment should be made. I humbly conceive that an express limitation of the time, in proportion to the distance of the place where the loss may happen, is much more likely to prevent fraud and inconvenience, than to leave it to depend upon casual circumstances, and the fluctuating notions of what may be judged *reasonable time*. Whenever the law can establish positive rules, it appears to me infinitely wiser to do so than to leave any thing to general

opinion, and the often dubious discretion of a court. The French law, as laid down in the text of this code, fixes the time for making the abandonment, in the most explicit manner, according to the distance of the place where the loss has happened, leaving nothing which negligence or improbity may pervert, or which ignorance may misconstrue.

These observations are equally applicable to the provisions in this code, in regard to the time for the presentment of bills of exchange. See page 137. of this volume.

The same uncertainty prevails in the English law on this subject, as on that of abandonment, in cases of insurance. There are no positive rules. The decisions in the books say that *due diligence* must be used; that the bill must be presented within a *reasonable time*: and what amounts to *due diligence*, or may be considered as *reasonable time*, is a question of law arising out of the facts of every particular case. See Chitty on Bills, 197—202. Surely nothing can be more doubtful and indefinite. Hence our law books are full of cases in which this question is litigated and decided—but never definitively settled.

(48) Page 229. In England, by stat. 22 G. III. c. 25. § 1. the ransoming of any British vessel captured by the enemy is absolutely prohibited, consequently, the underwriters would not be responsible for any composition made to obtain the release of a vessel under capture. In the United States congress have lately passed a law to the same effect.

(49) Page 241. The limitation of actions on abandonment, in cases of insurance, is strictly confined to the same periods of time within which the abandonment itself must be made; but in all other actions on policies of insurance, the limitation extends to five years.

(50) Page 243. The French law term *fin de non recevoir*, literally conveys but a very imperfect idea of its meaning. It is the *exceptio* of the civil law, of which there are a great many different sorts. See Institut. Lib. 18. Tit. 13. *de exceptionibus*. Dig. 44. Tit. 1. Cod. Lib. 8. Tit. 36. As the word *exception* in English has precisely the same meaning, and conveys a very dis-

inct notion of the French expression, I have adopted it in the translation; but as it is not very generally used in our law books, I have added the common law term *bar*.

(51) Page 261. The word *syndic*, in the original text, answers precisely to our English word *assignee*, when applied to the management of bankrupts' estates, though it also admits of a much more extensive meaning. In companies and communities, *syndics* are they who are chosen to conduct the affairs and attend to the concerns of the body corporate or community, and in that sense, the word corresponds with director or manager.

(52) Page 271. From a principle which seems generally to pervade the French law, that the *property* of the debtor rather than his *person* affords the best security for the payment of the debt, the system of hypothecation, or mortgage, is carried to a much greater extent in France than in England or this country. Hypothecation in France is either legal, judicial, or conventional. Legal hypothecation results necessarily from the operation of law, as, 1. The lien which married women have on the real estates of their husbands for their dowry, or the stipulations in their favour in the marriage contract; 2. That of minors, or persons *non compos*, or interdicted, on the estate of their curators or guardians; 3. That of the state, of corporations, and of public establishments, on the property of the collectors, receivers, and other accountable agents. Judicial hypothecation is the effect of the judgments of courts of justice rendered or acknowledged of record. These two species of hypothecation extend to all the real estate of the debtor *in presenti* or *in futuro*, saving certain modifications expressed in the provisions of the law. Conventional hypothecation proceeds from the agreement between the parties authentically contracted and acknowledged. It is a lien only on the real property specifically named in the contract. All these various privileges, liens, and mortgages, are required to be registered in the office of hypothecation, and take effect only in the order in which they are recorded, with exception, however, in favour of minors, persons under interdiction, and married women.

The whole of this admirable system of security to creditors is

exhibited with perfect method, precision, and clearness, in the Code Napoleon, Book III. Title XVIII.

(53) Page 275. Article 73. of the code of civil procedure, referred to in the text, relates to judicial citations, and declares, that if the person who is cited reside out of continental France, the periods of delay allowed for his appearance shall be,

1. For those who reside in Corsica, in the island of Elba, or Capraja, in England, or the neighbouring states of France, two months;

2. For those who reside in the other states of Europe, four months;

3. For those who reside out of Europe, on this side of the Cape of Good Hope, six months;

And for those living at a greater distance, a year.

Art. 74. of the same code ordains that, when a citation to a party domiciled out of France shall be personally served in France, it shall admit only of the ordinary delays; saving to the tribunal the right to enlarge the time, if occasion require it.

(54) Page 275. Article 683. of the code of civil procedure, relates to the levying of executions on real estates, and requires an abstract of the execution to be inserted, by the plaintiff, in one of the newspapers printed in the place where the court awarding the execution is held, and if there be none printed there, in one of those printed in the department, if there be any; proof of this publication shall be made by the production of the paper containing the said abstract, with the signature of the printer, legalized by the mayor.

(55) Page 289. See note (15) for what concerns the property of married women, under the different regulations, in regard to marriage, established by the Code Napoleon.

(56) Page 289. Inventories and other written evidence of contracts, titles, and facts, are rendered peculiarly necessary in France, where property is so often subject to liens and privileged claims; and where *parol* testimony is regarded with a much less favourable eye than under the English system of jurisprudence.

(57) (58) (59) Page 291. These three references in the text relate to the rights of wives, in case of the insolvency of their

## Book Art.

**ASSIGNMENT,**

Of the estate of an insolvent is voluntary or judicial	III. 566
Effects of these two kinds of assignment	569
Does not legally suspend the effect of prosecutions	570
Must be confirmed by the insolvent in person	571
He may be brought into court for that purpose	572
Declaration of assignment must be transcribed on tablets	573
Authorizes the creditors to sell the real and personal estate	574
Persons who cannot be admitted to the benefit of	575

**ASSOCIATION.***See Partnership.***ATTES T,**

Of the captain's journal after his arrival	II. 242
Of the proof of debts against an insolvent, by the judge-commissioner	III. 359

**ATTORNEY.**

The insolvent who has obtained a safeconduct may appear before the agents by attorney	468
The creditors of an insolvent may present their claims by attorney	502
The powers of those who appear as attorneys at the meeting of creditors must be verified by the commissioner	517

**ATTORNEYS AND COUNSELLORS,**

Not permitted to practise or plead in the tribunals of commerce without a special authorization	IV. 627
---	---------

**ATTORNEYS-GENERAL,**

Of the courts of appeal, must procure information respecting the demands of restoration of insolvents	III. 606
Their functions in relation to that matter	610

**AVERAGE,**

For which the lenders on bottomry and at respondentia are liable	II. 330
The insurer is liable for average on goods which the disability of the vessel renders necessary to be reshipped in another	393
What expenses and damages are reputed average losses	397
Mode of regulating, in default of special agreements	398
Detail of general averages	400
How they are to be borne	401
Particular average, and by whom paid	403, 404
Damage happening to goods by the fault of the captain, not average, but for which he is liable	405
Duties and small expenses on navigation not averages	406
Petty, for which a judicial demand is not admissible	408
Cases in which the clause <i>free from average</i> does not discharge the underwriter	409

**AUCTION.**

Sale of ships and vessels by public auction	II. 205
If the price be not paid within twenty-four hours, to be resold, and at the risk of the last purchaser	209
Sale of the goods of an insolvent by auction	III. 492
Bids which may be received after the adjudication	565

**B****BAILIFFS,**

Must be accompanied by witnesses in making protests of bills of exchange	I. 17;
--	--------

	Book	Art.
<b>BAILIFFS—(Continued.)</b>		
Formalities which they must observe, under pain of loss of office, damages and costs	I.	176
Their appointment, <i>see</i> , <i>loc.</i>	IV.	624
<b>BALANCE-BOOK,</b>		
Of an insolvent debtor, must contain his debts and credits	III.	470
<i>See Agents. Assignees. Failures.</i>		
<b>BANK OF THE SINKING FUND.</b>		
Cases in which the judge-commissioner may order the funds of an insolvent's estate to be deposited in this bank		497
What order necessary to draw the same out		498
<b>BANKING.</b>		
Exchange agents and brokers not permitted to transact any banking business on their own account	I.	85
<b>BANKRUPT.</b>		
A person married with separation of property, or under the dotal regulation, in case of failure, shall be prosecuted as a fraudulent bankrupt, if he has not filed in the clerk's office an abstract of his marriage contract, on commencing the prosecution of a merchant		69
In what cases a merchant failing is in a state of bankruptcy	III.	438
By what tribunals simple and fraudulent bankrupts are tried	439.	588, 596
The refusal of confirmation of the concordate, a presumption of bankruptcy		526
The refusal of allowance the same effect		531
Fraudulent bankrupts not admitted to the benefit of a general assignment		575
Merchants who shall be prosecuted as simple bankrupts	586,	587
At whose expense the costs of prosecution	589,	590
Appeal from the tribunals of correctional police in cases of bankruptcy		591
What insolvents are reputed <i>fraudulent bankrupts</i>	593,	594
Punishment of persons found guilty of bankruptcy		596
Sentences against, posted up		599
Administration of the property of bankrupts		600
Fraudulent bankrupts not admitted to restoration		612
In what cases charged with simple bankruptcy, may obtain it		613
<i>See Accomplice. Insolvent. Restoration.</i>		
<b>BARKS.</b>		
<i>See Ships and Vessels.</i>		
<b>BARRATRY,</b>		
Loss by, not chargeable to the underwriter unless expressly stipulated	II.	355
<b>BILLS OF EXCHANGE.</b>		
Their form	I.	110
On whom, and how they may be drawn		111
Cases in which they are considered only as simple promises		113
Those signed by minors, not merchants, are void		114
Provision for payment		115
Acceptance		118
Acceptance <i>supra</i> protest		126
Maturity		129
Endorsement		136
Joint responsibility		140
Guaranty		141
Payment		145
Payment, when lost		146

**BILLS OF EXCHANGE—(Continued.)**

Payment <i>supra</i> protest	Book Art.
Rights and duties of the holder	I. 138
Protest	160
Re-exchange	173
Limitation of actions in regard to bills of exchange	177
Jurisdiction of the tribunals in respect to them	189
<i>See Acceptance.</i>	IV. 635. 637

**BILLS OF LADING,**

Definition	II. 222
The master of a vessel must have one on board	226
What they ought to express, and how made	231, 232
Are evidence in certain cases	233, 234
If any of a ship's company bring goods from a foreign country insured in France, a bill of lading for the same must be left in the hands of the French consul, or a French merchant	365
Goods, for which there is no bill of lading, are not paid for if thrown overboard	420

**BILLS OF PARCELS.***See Invoice.***BLANKS.**

Merchants' books must be kept without blanks	I. 10
Policies of insurance must not contain them	II. 232

**BLOCKADE.**

The duty of the master of a ship in case of the blockade of the port of destination	279
---	-----

**BOOKS,**

<i>Of Merchants</i> , in what cases admitted in evidence in courts of justice	I. 14
Those of an insolvent debtor taken from under the seals and delivered to the agents	III. 463
Must be adjusted and balanced by the insolvent who has obtained a safeconduct	468
Are delivered to the agents in order to adjust the balance-book	472
Irregularities therein, or concealment of, considered as evidence of bankruptcy	587. 593.
What ought the journal or day book of a merchant to contain	I. 8
It must be certified	10
The merchant must enter monthly in this book the expenses of his household	I. 8. III. 586
What is the use of the book of inventories, and by whom certified	I. 9, 10
<i>Of Exchange-Agents and Brokers.</i> Must contain the conditions of sales and operations	84
<i>See Purchases.</i>	

**BOTTOMRY AND RESPONDENTIA.**

Regulations in respect to these loans	II. 311
Distribution of property saved from shipwreck, between creditors on these loans, and insurers	331
Limitation of actions	432
Subject matter of these contracts	315
Circumstances which may render them void	316
On what subjects prohibited	318, 319
Other regulations concerning these contracts	323. 327. 329
Bottomry and respondentia bonds may be made negotiable	313
To what extent is the guaranty of payment by endorsement	314
On what objects a lien for principal and interest	320
Cases where the lender bears the loss	324, 325

<b>BOTTOMRY AND RESPONDENTIA—(Continued.)</b>		<b>Book.</b>	<b>Art.</b>
Losses, or which the lender is not liable		II.	326
Average losses to which the lenders contribute in discharge of the borrowers			330
These loans reputed commercial acts		IV.	633
<b>BROKERS,</b>			
They certify the rate of exchange		I.	7
Where established, and how appointed			7
Different sorts, and their functions	77, 78, 79, 80.		82
Persons who can not be brokers			83
Book which they must keep			84
What they are prohibited from doing			85
How prosecuted in case of failure			86
May be employed by the assignees of an insolvent to sell the property		III.	492
<b>BULLION.</b>		<i>See Metallic Substances.</i>	
		C.	
<b>CAPTAIN.</b>		<i>See Master of Ships.</i>	
<b>CARGO.</b>			
Masters of vessels must enter on their journal, or register, whatsoever concerns the lading		II.	294
Survey which must take place before the lading			295
Usage regulates the time of lading and unlading when not agreed upon			274
Different mode of lading vessels			296
Subject to a lien for the principal and interest of money lent at respondentia			299
In what manner insurance may be made on shipments from other parts of the world for Europe			327
Cases in which no cargo is brought home			348
When there are several policies of insurance on the same cargo, how adjusted			359
Other regulations in relation to shipments			361
<b>CHARTER-PARTIES.</b>			
The master is required to have them on board		II.	296
What they must contain, and principles in regard to them			273
		<i>See Freight. Freighters.</i>	
<b>CLERKS,</b>			
Of the tribunals of commerce, their appointment, fees, &c.		IV.	624
<b>CLOTHES,</b>			
Of the ship's crew, do not contribute in case of jettison		II.	419
<b>COMMANDITE.</b>		<i>See Partnership.</i>	
<b>COMMANDITARY.</b>		<i>See Partners.</i>	
<b>COMMERCIAL CODE.</b>			
Epoch of the commencement of its obligatory force—Art. 1. of the law of promulgation, page			336
<b>COMMISSIONER,</b>			
Of insolvent debtors, appointed by the tribunal of commerce from among its judges		III.	454
His functions			451—455



<b>COMMON CARRIER.</b>	Book Art.
The transport bill forms a contract between the consignor and the carrier, or the consignor, the factor, and the carrier	I. 101
It must mention the indemnity in case of delay	103
Guaranty of the carrier	103
Cases in which the sale of the objects transported may be sold for the benefit of the carrier	106
Limitation of actions against the carrier	108
<b>COMPANIES.</b>	<i>See Partnership.</i>
<b>COMPETENCY.</b>	<i>See Jurisdiction.</i>
<b>COMPOSITION,</b>	
Between the creditor and an insolvent debtor	III. 519
Objections thereto carried before the tribunal of commerce	IV. 635
<b>CONCEALMENT.</b>	
The wife of an insolvent who should have conveyed away or concealed the moveable effects and jewels of her husband, shall be criminally prosecuted	III. 555
	<i>See Insurance.</i>
<b>CONFIRMATION.</b>	<i>See Insolvent.</i>
<b>CONSULS.</b>	
In what cases the masters of ships must apply to the French consuls in foreign countries	II. 334. 344
<b>CONSULTATION,</b>	
Which must take place before throwing overboard a part of the cargo of a ship	412
<b>CONTRACTS.</b>	<i>See Engagements.</i>
<b>CONTRIBUTION,</b>	
How made for the ransom of goods captured by the enemy	304
Wages of seamen not liable to contribution	304
How regulated in case of jettison	419
There can be no contribution when the jettison does not save the ship	423
Goods thrown overboard do not contribute to the damage which may happen, after the jettison, to those saved	425
	<i>See Jettison.</i>
<b>CONVENTIONS,</b>	
Which are reputed commercial acts	IV. 633
<b>COURTS,</b>	
<i>Of Appeal.</i> They take cognizance of demands for restoration in cases of insolvency	III. 604
Mode of proceeding on appeals for judgments rendered by the tribunals of commerce	IV. 645
<i>Of Criminal Jurisdiction.</i> They take cognizance of cases of fraudulent bankruptcy	III. 595
Their decrees are posted up and inserted in a newspaper	599
	<i>See Triunale.</i>
<b>CONVEYANCE,</b>	
Fraudulent, of money, debts, goods, or effects, by an insolvent debtor, constitutes fraudulent bankruptcy	593
<b>CREDITORS,</b>	
Their convocation by the commissioner	476, 477, 478

**CREDITORS—(Continued.)**

	Book	Art.
Penalty incurred by the creditors who are in collusion with the insolvent	III.	479
They present a triple list of provisional assignees		480
When they have any complaint to allege against the assignees, they refer the matter to the commissioner		495
Notification given to them to prove their debts		502
Their affirmation		507
What a commissioner may do when a debt is disputed		508
Additional time granted for the verification of the debt		511
Defaulters not included in the dividends		513
Appeal of the creditors admitted	514,	515
Verification of the powers of attorney		517
Union of the creditors		527
Payment of the privileged creditors		533
In case of joint obligations		534
In cases of pledges or pawns		535
How creditors who have become sureties are admitted		538
Rights of mortgage creditors	539—	543
Dividends how made	558—	561
Rights of creditors to goods stopped <i>in transitu</i>		582
Fraudulent bankrupts may be prosecuted on the information of creditors		595
They may oppose the restoration of an insolvent		608
<i>See Composition. Debts. Pawns. Privilege. Sales.</i>		

**CURRENT PRICE,**

Of exchange, goods, insurance, freight for land and water carriage, and public securities, are determined by the operations on the public exchange	I.	73
By whom certified		73

**D.****DAMAGE,**

For which a factor for transportation by land and water is liable		98
Happening to goods on board a ship for which the captain is liable	II.	415
In what case the insurers are liable for damage		305
Considered as an average loss	400	413
Estimation of		414
Exceptions to actions for damage in certain cases		435

**DAMAGES,**

<i>As an indemnity</i> may be recovered from notaries and bailiffs for neglect of duty in certain cases	I.	176
Which are due as privileged debts to freighters	II.	191, 193
Factors are bound to give a receipt for goods delivered to them under pain of damages		285
Cases in which the master of a ship is liable for damages	231.	285, 297
Accomplices in fraudulent bankruptcy liable for damages	III.	598
<i>See Indemnity.</i>		

**DATE,**

Books of merchants must be kept in the order of dates	I.	10
The same rule must be observed by brokers and exchange agents		84
Orders and bills of exchange cannot be antedated, under pain of punishment for forgery		139

**DEATH,**

Of the drawer of a bill of exchange exempts the holder from the obligation of protesting it for non-payment		163
---	--	-----

**DEBTS,**

Book Art.

- Enumeration of those which are a lien by privilege on a ship II. 191
- Those payable to a merchant must be entered on his journal I. 8
- Debts classed according to their order of privilege II. 191
- In what manner proved 192
- State of the debts which ought to be mentioned in the balance-book III. 471

*See Inventory.***DECLARATION.**

- Insurance becomes void in case of false declaration on the part of the insured II. 348
- Declaration to be made by the insured in cases of abandonment 379
- By an insolvent at the clerk's office within three days after his stoppage of payment III. 440
- The insolvent who has not made this declaration is under the imputation of bankruptcy 587
- It is the same, when the declaration does not contain the name and domicile of each of the partners of a mercantile house 587

**DECLARATION OF WAR,**

- The loss and damage resulting therefrom are at the charge of the insurers 350

**DECREES.***See Judgments.***DEPOSITARIES,**

- To be entitled to the benefit of privileged creditors, they must conform to the provisions enacted for loans on pawn I. 95
- They are not admitted, in case of insolvency, to the benefit of an assignment, nor to restoration III. 575. 612
- He is considered as a fraudulent bankrupt who applies to his own use the property deposited in his hands 693

**DETERIORATION.**

- The policy of insurance must designate the articles which are subject to it II. 355
- To what extent necessary to authorize an abandonment 369

**DIAMONDS.***See Jewels.***DIMINUTION.**

- In what cases the underwriters are not liable for losses arising from this cause 352

**DISABILITY,**

- Of ships and vessels from the perils of the seas, is cause of abandonment to the underwriters, under certain circumstances 369
- When the abandonment may be made on this account 389
- Notification of the disability 390
- The captain's duty in such cases 391

**DIVORCE.**

- Formalities required in regard to merchants for judgments of divorce I. 66

**DONATIONS.**

- Fictitious donations render an insolvent chargeable with fraudulent bankruptcy III. 593

**DOTAL REGULATION.** *See Marriage.***DUTIES,**

- Such as pilotage, tonnage, &c. are privileged claims on the produce of the sale of ships II. 191
- The underwriter is not liable for these charges 354

IV. 621

change	L. 118
a bill of exchange	136
operation	137
	138
	139
authorization	L. 2. 6
	7
captain and crew of	II. 250
a share in indem-	
	257
commercial acts	IV. 633

II. 435

*Public Exchange.*

	I. 73, 74, 75, 76
brokers	81
exchange-agents, un-	
according to law	83
	84
loss	85
force of the contracts	
	86
provisions	87, 88
	89
judicial sale of ships	
	II. 191, 192
insurer	393
	400. 403
	III. 589
and general ave-	
	II 397. 400. 403
	406
household are ex-	
ample bankruptcy	III. 586
of his expenses is	
	593
	I. 91, 92
	93
riage must make in	
	96
	97
delivered to them	II. 285

husbands. This code throughout manifests the greatest regard for the just claims of creditors, and the faithful performance of contracts. It has therefore guarded most scrupulously against fraudulent conveyances, collusive agreements, or feigned stipulations.

On the subject of the claims of married women, in cases of failure, I cannot do better than to refer the reader, for a full elucidation of the provisions in the text, to the able and eloquent speech of M. Treilhard, in the *Motives*, at page 71. of this volume.

(60) Page 297. The civil law permitted the debtor to make an assignment of all his estate for the benefit of his creditors, and in his own discharge from arrest or imprisonment. See Dig. Lib. 42. Tit. III. *de cessione bonorum*. Cod. Lib. 7. Tit. II. *qui bonis cedere possint*. Nov. 135. This alleviation to the unfortunate debtor was introduced among the Romans, by the Julian law, in order to mitigate the severity of the law of the twelve tables, which rendered creditors absolute masters of the liberty and life of their insolvent debtors. At length the *cessio bonorum* became so frequent, in some parts of Italy, that it was found necessary to attach some public disgrace to the practice; the debtor was therefore ordered, on making the assignment, to wear a cap or bonnet of an *orange* colour; at Rome a *green* cap was worn on such occasions.

The benefit of the *cessio bonorum* was early introduced into France: it was called the *refuge of the miserable*; but it was not until the end of the sixteenth century that the wearing of the *green cap*, according to the practice at Rome, was adopted. Other formalities had been observed under the *salique law*. It was always considered as a badge of ignominy, worn by the debtor to show to the public that he had lost his property by his own folly. This mark of public disgrace was, however, in later times, generally abolished in France, and the assignment was merely required to be made in open court. The consular judges, who, before the adoption of the present code, took cognizance of commercial transactions, had no jurisdiction in this matter. The Code Napoleon, which has superseded all the former laws, usages,

and customs, in every part of France, contains several important provisions on this subject. See Code Napoleon, Book III. Tit. III. § 5. Relief from personal imprisonment is thereby afforded to all unfortunate debtors who are honest. The assignment, however, does not operate as a complete discharge of the debtor from his engagements: it only liberates him, as far as the property goes towards the payment of his debts. All his future acquisitions are liable till his debts are fully paid. The proceedings rendered necessary in cases of assignment of insolvents' estates, other than those mentioned in the text to which this note refers, are laid down in the code of civil procedure, Book I. Tit. XII.

(61) Page 299. Anciently, in France, it was sufficient if the insolvent debtor made his assignment by attorney, or by written notice sent to his creditors, conformably to the provision in the civil law on this subject. See Dig. Lib. 42. Tit. III. § 9. *de cessione bonorum*; but this indulgence was abolished, as early as the year 1510, in the reign of Louis XII. and the debtor was required to make the assignment in person in open court. The provision in the text of this code is equally rigorous.

(62) Page 301. I must here beg leave to refer the reader to my note on the French word *revendication*, at page 62. of this volume. The right of stopping *in transitu*, which formerly prevailed in France, has been considerably modified and reduced by this code, with a view to afford greater security to creditors, in cases of failure, and to give more stability to mercantile engagements. The English doctrine on this subject corresponds, pretty generally, with the principles laid down in the text; but the numerous and diversified relations of human affairs, in a country where commerce constitutes the chief business of life, has often brought this question in litigation, and given rise to a multitude of judicial decisions on the subject. The reader will find most of these decisions referred to, in a note to the 1st vol. of Espinasse's *Nisi Prius Reports*, page 243. and many of them well arranged in Abbott on Shipping, page 297—319. See also 2 Caines, 38. 3 Caines, 182.

(63) Page 307. The appeal mentioned in the text is ordered because the tribunals of correctional police, being instituted for

the punishment of the lighter offences against public order and good morals, cannot take cognizance of a crime involving so severe a punishment as that of fraudulent bankruptcy, which must necessarily be tried by a jury:—for juries have been introduced in criminal cases, under the new system of jurisprudence in France.

(64) Page 309. The penal code declares the punishment of persons convicted of bankruptcy, in the following articles:

Art. 402. Those who, according to the provisions of the commercial code, shall be found guilty of bankruptcy, shall be punished as follows:

Fraudulent bankrupts shall be sentenced to hard labour for a limited time;

Simple bankrupts shall be sentenced to imprisonment for not less than a month, nor more than two years.

Art. 403. Those who, according to the provisions of the commercial code, shall be declared accomplices in fraudulent bankruptcy, shall undergo the same punishment as fraudulent bankrupts themselves.

Art. 404. Exchange agents and brokers who shall have failed in business, shall be sentenced to hard labour for a limited time; if they be convicted of fraudulent bankruptcy, their punishment shall be hard labour for life.

Article 19. of the same code declares, that condemnations to hard labour for a certain time, shall be for not less than five years, nor more than twenty.

(65) Page 311. The provision in the text, in regard to the separate prosecution of civil and criminal actions, appears to be intended to abrogate the ordinance of 1667, tit. 18. art. 2. wherein it is declared that when two actions will lie, civil and criminal, for the same fact, and tending to the same object, they cannot be accumulated, and both be prosecuted at the same time; but that the plaintiff must choose one of the two; for one excludes the other. This seems conformable to the civil law. Digest, Lib. 48. Tit. 1. *de publicis judiciis*.

(66) Page 315. The term *rehabilitation*, in the original, which I have rendered by our English word restoration, denotes a restitution of former rights and privileges which had been for-

feited by misconduct or crimes. Thus, letters of *rehabilitation* are sometimes granted under the great seal, to reinstate in reputation and honour, a person who had been condemned to suffer some disgraceful punishment, or to restore a nobleman to his rank and quality, which he had lost by some vile and dishonourable transaction. There is also *rehabilitation* of marriage, formerly ordered by the parliaments of France: it is a new celebration of the nuptials, on account of the first having been improperly or illegally performed, and when the parties still consent to remain united in wedlock. The disability pronounced in the text against merchants who have failed, and not been restored by *rehabilitation*, would appear very severe, if not unjust, in this country. Failures and bankruptcies are here viewed with a much more indulgent eye than in France: they are considered, with us, as misfortunes incident to an active spirit of commerce and a youthful ardour of enterprise—misfortunes over which a common sentiment of sympathy should throw a veil, and which renewed industry and more successful efforts may soon overcome or sink into oblivion. In a country at once so young in the arts, so fruitful in resources, and so generally commercial as this, to exclude the merchant who had failed in business from the public exchange, until he had fully satisfied all his creditors, might tend too much to dampen exertion and check credit and confidence, to be productive of any beneficial consequences to society. It might, indeed, so much discourage the unfortunate debtor in his future application and efforts, as to deprive him of all hope of ever being in a situation to redeem his mercantile honour, and relieve his conscience from the moral obligations by which he may still consider himself bound.

Yet, though the genius of our government, and the commercial habits of our citizens, might render so severe a law highly impolitic in this country, we cannot refuse our admiration of the moral excellence of that system of commercial jurisprudence, which throughout breathes the most sacred regard for private property and public order, enjoins the faithful performance of contracts, ordains the prompt administration of justice, and requires the unsullied purity of the mercantile character.



# INDEX.

	A.	Book Art.
<b>ABANDONMENT,</b>		
In what cases it may be made		II. 369
Cannot be made before the commencement of the voyage		370
Cannot be partial or conditional		372
Time in which to make it		373
Notification of advice		374
Time which must elapse, before made for want of advice		375
Formalities required		378
After made, in case of shipwreck, the insured bound to use endeavours to recover the property		381
After notice of, the insurer is bound to pay the insurance within a certain time		382
When notified and accepted, the property insured belongs to the insurer		385
Of the ship, includes the freight of the goods saved		386
Cases in which it cannot be made for account of disability of the ship		389
When made, the insurer runs the risk of the goods reladen in another vessel		392
And is liable for other expenses		393
Limitation of actions on abandonment		431, 432
<b>ABBREVIATIONS</b>		
Not permitted in the books of exchange agents and brokers	I.	34
<b>ABROGATION</b>		
Of the days of grace, favour, usage, &c. in regard to bills of exchange		135
Of the former commercial laws in France. Art. 2. of the decree of promulgation		
<b>ABSTRACT</b>		
Of the articles of partnership must be recorded in the clerk's office		42
What it ought to contain and by whom signed	43,	44
Of the marriage contract to be posted up		67
<b>ACCEPTANCE,</b>		
Responsibility of the drawer and endorsers of a bill of exchange, in regard to its acceptance.		118
Refusal of, how proved		119
Obligation of the acceptor		121
Formalities to be observed		122
May be restricted		124
Period in which it must be made		125
By intervention, or <i>supra</i> protest		126
Not prejudicial to the rights of the holder against the drawer and endorsers		128
<i>See Bills of Exchange.</i>		

	Book	Art.
<b>ACCOMPLICE.</b>		
In what cases creditors become such in a fraudulent bankruptcy	III.	479
When the wife of an insolvent may be prosecuted as such	555,	556
Misdemeanors which render individuals accomplices in fraudulent bankruptcy, and their punishment		597
Civil condemnation as well as criminal, pronounced against them		598
	<i>See Bankrupt.</i>	
<b>ACCOUNTABLE PERSONS,</b>		
Not admitted to the benefit of an assignment nor restoration, in case of insolvency	575.	612
<b>ACCOUNTS,</b>		
Must be rendered to the provisional assignees by the agents of an insolvent's estate, and by the former to the definitive assignees	481.	527
	<i>See Return-Accounts.</i>	
<b>ACQUITTANCE,</b>		
For the payment or security of the custom-house duties, must be in the possession of the captain on board the vessel	II.	226
Given by the agents of an insolvent's estate	III.	216
In proof of payment, must be joined to the petition for restoration		605
<b>ACTS,</b>		
Commercial, what are reputed such	IV.	632
Of an insolvent for ten days previous to his failure declared null	III.	444
Conservatory, to be performed by the agents and assignees of an insolvent		449
Of the government, necessary to authorize anonymous partnerships	I.	37
<b>ACTIONS</b>		
Limitation of	II.	431
Civil, after commencement of suit, by whom prosecuted in cases of failure	III.	494
Civil, in cases of bankruptcy, to be prosecuted separately from criminal actions		590
Right of, accrued to an insolvent, may be transferred by the assignees		563
Enumeration of, within the jurisdiction of the tribunals of commerce	IV.	632
<b>ADJUDICATION,</b>		
Of ships and vessels under seizure	II.	206
	<i>See Sale.</i>	
<b>ADMINISTRATION,</b>		
Of the property of bankrupts	III.	600
	<i>See Partnerships.</i>	
<b>ADMINISTRATORS,</b>		
Of anonymous partnerships	I.	32
Not admitted to the benefit of a general assignment, nor restoration in cases of failure	III.	575. 612
<b>ADVICE.</b>	<i>See Abandonment.</i>	
<b>AFFIRMATION,</b>		
Required under oath from the presumed debtors, on a bill of exchange barred by the limitation of actions	I.	129

<b>AFFREIGHTMENT.</b>	<i>See Freight. Charter-Parties.</i>	Book Art.
<b>AGENTS,</b>		
Of exchange	<i>See Exchange-Agents.</i>	
Of merchandise	<i>See Factors.</i>	
In cases of failure, by whom and how appointed	III. 454.	456
Duration of their office		466
Their revocability		460
Oath to be taken on entering into office		462
Take the books and papers of the insolvent		463
Receive money due to the insolvent and give acquittances		463
Sell goods of a perishable nature		464
Money received by them, how disposed of		465
Balance book delivered to them	470. 472,	473
Delivery of the same by them to the judge-commissioner		476
Cessation of their functions and accounts which they must render	481,	482
Compensation allowed them, when not chosen among the creditors		483
Must do conservatory acts and cause mortgages to be recorded		499
<b>ALIENATION.</b>		
Conditions on which minors, who are merchants, may alienate their estates	I. 6	
By women, sole traders		7
Particular, cases in which property, stipulated dotal, cannot be alienated		7
Of the debts and rights of action of an insolvent, the recovery of which has not been effected or enforced by the agents or assignees	III. 563	
<b>ALLOWANCE.</b>	<i>See Insolvent.</i>	
<b>AMMUNITIONS,</b>		
Are not subject to contribution in cases of jettison	II. 419	
<b>ANCHORS,</b>		
Of a ship when to be abandoned in cases of danger, and the consultation thereupon to be taken		419
<b>APPAREL.</b>	<i>See Rigging and Apparel.</i>	
<b>APPEAL,</b>		
When made from an award of arbitrators	I. 52	
Cannot be renounced by a guardian in cases where minors are interested		63
From the judgments of the correctional tribunals in cases of simple bankruptcy	III. 591	
Where made from the judgments rendered by the tribunals of commerce	IV. 644	
Time allowed for entering appeals		645
Amount required to render an appeal admissible		646
Rights of the courts of appeal		647
Mode of procedure therein		648
<b>APPRAISERS.</b>	<i>See Referees.</i>	
<b>ARBITRATORS,</b>		
Appointment of, to decide controversies between partners	I. 51	
How appointed	53.	55
Their award open to appeal in certain cases		52

	Book	Art.
<b>ARBITRATORS—(Continued.)</b>		
Period when to take effect	I.	54
Papers and accounts of the parties to be delivered to them without formality		56
They may enlarge the time for the delivery of the papers		60
Appointment of an umpire in case of disagreement		60
Must state the grounds of their award		61
Regulations to be observed in relation to its execution		61
<i>See Appeal.</i>		
<b>ARMAMENT.</b>	<i>See</i>	<i>Outfits.</i>
<b>ARREST.</b>		
Debts for which the captain and crew may be arrested	II.	231
<b>ARRIVAL.</b>		
Factors for transportation by land and water are sureties for the safe arrival of the goods intrusted to them, within the time fixed in the transport bill	I.	97
<b>ASSIGNEES,</b>		
<i>Definitive</i> , must make a report to the magistrate of safety of the causes and character of the failure	III.	488
Circumstances in which one or more are appointed by the creditors		527
They represent the mass of the creditors		532
Their functions		532
Cases in which they must proceed to the sale of the real estate of the insolvent		532
Redemption of the goods pawned for the benefit of the estate		536
State of the failure and the funds on hand must be delivered by them monthly to the commissioner		539
Account which they must render to the creditors united		562
What acts they are required to do, when authorized to dispose of the rights of action of the insolvent		563
With the exception of deposits and consignments they may retain goods stopped <i>in transitu</i>		522
What they are required to do in cases of stoppage <i>in transitu</i>		535
They may institute prosecutions of simple bankruptcy before the tribunals of correctional police		533
They must deliver to the imperial prosecutors the papers demanded		601
Papers not necessary in the course of the prosecution to be returned to them		603
<i>Provisional.</i> Their appointment from a triple list.		490
They must demand the removal of the seals, and proceed to an inventory of the insolvent's estate		486
After the inventory, the goods, securities, and titles of the insolvent delivered to them		491
Recovery of the debts due to the insolvent, and the sale of his moveable property		492
Forms to be observed in selling the insolvent's goods		464
Conservatory acts which they must do		499
They summon the creditors to deliver in proof of their debts, or deposit them in the clerk's office		502
They convene them to prove their debts		514
Definitive account, which they render in the presence of the commissioners		525
Cessation of their functions		525
<i>See Bankrupt. Confirmation. Insolvent.</i>		

# Index.

389

- FAILURE.** *See Insolvency.* Book Art.
- FINE,**  
Imposed on exchange agents and brokers for infractions of the law I. 87  
*See Notary.*
- FIRM.** *See Partnership.*
- FOREIGNERS,**  
They cannot be admitted to the benefit of a general assignment in cases of failure III. 575
- FREIGHT,**  
What brokers may be employed in the business of freight I. 86  
Cases in which the freighter is benefited by the freight, or pays it entirely or partially II. 98, 99  
The expenses must be paid by the freighter for the delay of the ship occasioned by his act 294  
When the mariners are permitted to bring goods in the ship they pay the freight 251  
The seamen have a special lien on the freight for their wages, and for the performance of the agreement of the parties 271. 290  
From what period it commences 275  
Definition of freight, and mode of adjusting it 286, 287, 288  
How paid in case of repairing the vessel during the voyage 296  
In what cases forfeited 297  
Of goods sold from necessity 298  
Regulations in regard to, in cases of interdiction of commerce, jettison, shipwreck or pillage 299  
The shipper cannot demand a reduction of the price of freight 309  
Cases in which he may abandon the goods for the freight 310  
How paid in cases of discharge on account of disability of the ship 393  
Limitation of actions on account of 433
- FURNITURE.** *See Moveables.*
- G.
- GAMING,**  
Where an insolvent merchant is proved to have lost large sums in gaming, he may be prosecuted for bankruptcy III. 586
- GOODS.** *See Merchandise. Moveables.*
- GRACE.**  
Abrogation of the days of grace, favour, usage, &c. for the payment of bills of exchange I. 165
- GRAND JUDGE.**  
The tribunals of commerce are under his superintendence IV. 624
- GUARANTY.**  
The payment of a bill of exchange may be guarantied by third persons not parties to the bill I. 14  
Obligations thence arising 142  
*See Security.*
- GUARDS.**  
Commercial, their establishment for Paris, and their functions IV. 625
- GUARDIANS,**  
Cannot renounce the right of appeal from an award of arbitrators in which minors are interested I. 63

<b>GUARDIANS —(Continued.)</b>		<b>Book Art.</b>
They are not admissible to the benefit of a general assignment in case of failure		III. 575
They cannot be restored before the settlement of their accounts		614
<b>H.</b>		
<b>HEIRS,</b>		
Of Partners, provisions in regard to them		I. 62
Affirmation which may be required of them in regard to actions barred by limitation of time		189
<b>HYPOTHECATION.</b>	<i>See Mortgage.</i>	
<b>I.</b>		
<b>IMMOVABLES.</b>	<i>See Alienation. Insolvency. Mortgage.</i>	
<b>IMPRISONMENT,</b>		
Of the person, in default of payment of the price of ships bought at a judicial sale		II. 309
In virtue of certain judgments		III. 592. IV. 625
	<i>See Insolvent.</i>	
<b>INSOLVENCY.</b>		
Persons who have failed in trade cannot become exchange-agents nor brokers before their restoration		I. 83
In case of the failure of the acceptor of a bill of exchange, the holder may have it protested, and pursue his remedy against the other parties		163
Under what circumstance is a merchant in a state of failure		III. 457
He must, within three days after stopping payment, make a declaration thereof at the clerk's office of the tribunal of commerce		440
How the commencement of the failure is declared, and its period fixed		441
The debtor is dispossessed of the administration of his estate		442
Period in which no lien nor mortgage can be obtained on the property of the debtor		443
Nullity of gratuitous conveyances of the debtor		444
Other acts which are presumed fraudulent	445, 446,	447
The failure renders debts not due demandable		448
Affixion of the seals		449
Appointment of the judge-commissioner and the agents		454
Functions of the agents in relation to the estate of the debtor		462
Balance-book		470
Appointment of the provisional assignees		476
Cessation of the functions of the agents and their compensation		481
Removal of the seals and the inventory		485
Sale of the goods and collection of the debts		491
Conservatory acts		499
Proof of the debts		501
Meeting of the creditors		514
Concordate or composition		519
Union of the creditors		527
General provisions in relation to the creditors		532
Rights of mortgage creditors		539
Rights of wives		544
Dividends among the creditors		558
Mode of selling the real estate		564
Assignment of the insolvent's estate		566
Stoppage in transitu		576
	<i>See Bankrupt. Insolvent.</i>	

**INSOLVENT,**

**Book Art.**

By what judgment arrested and detained in the house of arrest for debt, or kept in the custody of a police officer, bailiff, or military guard	III. 455
Publication of the judgment by abstract	457
Rendered provisionally executory	457
Report of the judge-commissioner on the affairs of the insolvent and proposition to liberate him with -safeconduct	466
The insolvent may demand a safeconduct from the tribunal when not proposed by the commissioner	467
Measures afterwards to be taken	468, 469
The insolvent is present or duly summoned at the removal of the seals and the making of the inventory	487
Called to a meeting of the creditors	516
The refusal of confirmation of the concordate renders the insolvent chargeable with bankruptcy	526
Clothes and furniture which are returned to the insolvent	529
Cases in which he may demand an allowance	530
The refusal of allowance by the tribunal is a presumption of bankruptcy	531
The merchant who has failed, and become insolvent, cannot show himself afterwards on the exchange, until legally restored to his former rights, by the payment of all his debts	614

**INSURANCE,**

Contract of	I. 79
What the policy ought to contain, and how drawn	II. 332
The same policy may contain several different insurances	333
What may be the subject matter	334, 335
Cases in which the underwriter may require a verification of the objects insured	336
Designation of the vessel not necessary in certain cases	337
If the price of articles insured be in foreign money it must be valued in the currency of France	338
Mode of ascertaining the value of merchandise not fixed in the policy	339
Basis on which is determined the valuation of goods insured from a country where trade is carried on only by exchange	340
Justification required from the captain by the insurers, in case of loss	344
Bills of lading required	345
What may be done in case of the failure of the insurer or the insured	343
Subject matter which renders insurance void	347
Other causes of nullity	348, 349
What loss, damage, diminution, &c. for which the insurers are liable	350
Insurer not liable for the misconduct or barratry of the master	353
In what cases the insurance is partially void	357, 358
Mode of adjustment where there are several policies on the same cargo	368
Rules in regard to distinct insurances on goods presumed to be in several vessels, but which are laden on board only one	361
In what cases the insurers are discharged	363, 364, 365, 366
Exceptions to actions	435

**INTERDICTION OF COMMERCE.**

Where there is an interdiction of commerce with the country whither a vessel is bound before her departure, the contracts in relation to the voyage are dissolved	II. 276
---	---------

**INTEREST,**

On a bill of exchange protested, &c.	I. 184, 185
--------------------------------------	-------------

<b>INTEREST—(Continued.)</b>	<b>Book Art.</b>
On the funds of an insolvent's estate deposited in the bank of the sinking fund	III. 487
<b>INTERPRETERS,</b>	
Established as brokers	I. 77. 80
<b>INTERVENTION.</b>	<i>See Bills of Exchange.</i>
<b>INVENTORY,</b>	
Required to be made every year by merchants	I. 9
Of the estate of an insolvent debtor	III. 486. 491
<b>INVOICE,</b>	
Sales and purchases are evidenced by the acceptance of the invoice	I. 109
It serves to ascertain the value of goods when no price is fixed in the contract	II. 339
J.	
<b>JETTISON,</b>	
By whom are the losses and damages occasioned thereby supported	330
Consultation to be had before throwing goods overboard, and the selection to be made	410
Statement of the losses	414
Valuation of the goods thrown overboard	415
Compensation for the losses and damages thereby sustained	416
Articles which do not contribute	419
What things are not paid for in case of jettison	420
Cases in which there is or is not cause for contribution	422
In what cases the owners of the goods thrown overboard are bound to return what they have received in contribution	429
<b>JEWELS.</b>	
Cases in which the wife of an insolvent may claim them from the creditors	III 554
<b>JOINT CONCERNS.</b>	<i>See Partnership.</i>
<b>JOURNAL.</b>	<i>See Register.</i>
<b>JUDGE-COMMISSIONER,</b>	
Appointment of, by the tribunal of commerce, from among its members to superintend the affairs of an insolvent	454
Functions of this commissioner	458. 463. 469. 474. 478. 482. 490. 492. 495. 498. 498. 501. 505. 507, 508, 509. 511. 515. 518. 521. 525. 528 531, 559. 560. 562. 585
Period when his functions cease	525. 528 531, 559. 560. 562. 585
<b>JUDGES OF THE TRIBUNAL OF COMMERCE,</b>	
Number of these judges and of the substitutes	IV. 617
Mode of election	618. 621
Interval for re-election	623
They have no compensation	623
Oath which they are required to take	629
<b>JUDGMENT,</b>	
Ordering the affixion of the seals in cases of failure	III. 440
Declaring the commencement of the failure, appointing the commissioner and agents, &c.	454, 455
Notice and publication of the same	456, 457
How judgments are rendered in the tribunals of commerce	IV. 626
Competency	631



**JUDGMENT—(Continued.)**

Actions on which these tribunals judge definitively, or subject to appeal	Book Art. IV. 648, 644
Against bankrupts to be posted up	III. 509

**JURISDICTION,**

Of the tribunals of commerce	IV. 631
Of the civil tribunals in places where there are no tribunals of commerce	640
Of the courts of appeal	647

**L.****LADING.***See Cargo.***LOANS.**

Sums lent to the master to answer the necessities of the vessel during the last voyage are privileged debts	II. 191
Those lent on bottomry for repairing, victualling and equipping the ship, are also privileged	191
Mode of verifying these loans	192
<i>See Bottomry and Respondentia.</i>	

**LOSSES,**

To what extent is the commanditary partner liable for losses	I. 36
Those which the factor for land and water carriage is liable	98
In case of the loss of a bill of exchange, opposition to its payment is admitted	149
Damage and losses at the risk of the insurers	II. 350
Proportion of loss which authorizes an abandonment in cases of insurance	369
The insolvent who has stated fictitious losses is reputed a fraudulent bankrupt	III. 593

**M.****MAGISTRATE OF SAFETY,**

The agents and assignees of an insolvent required to deliver him a summary statement of the insolvent's affairs	488
Measures which this magistrate may officially take thereupon	489
Information which he must transmit to the judge-commissioner	490
Cases in which an insolvent is remanded to him under accusation of bankruptcy	526, 531

**MARRIAGE,**

An abstract of the marriage contract, where one of the parties is a merchant, must be exposed on a tablet	I. 67
Regulations concerning stipulations in favour of the wife in this contract	III. 549
<i>Under the Dotal Regulation.</i> Cases in which the property of the wife stipulated as dotal may be alienated	I. 7
Obligations imposed on the parties married under this regulation	67

**MASTER OF SHIPS,**

Notifications and citations given to him in certain cases when the ship is under seizure	II. 201
His functions cease after the adjudication of the ship under seizure	208
In what cases, when dismissed, he can claim an indemnity, and when part owner, reimbursement	218, 219
For what objects responsible	221, 222
He must form the crew	223
Keep a register or journal	224

**MASTER OF SHIPS—(Continued.)**

	Book	Art.
Cause a survey of the ship to be made before he takes charge	II.	225
Documents which he must have on board		226
Circumstances in which he is bound to be personally on board		227
His liability in damages in case of infraction of this last provision		228
Justified by obstacles of superior force		229
Only debts for which he may be arrested on board		231
Must have the special authorization of the owners for certain objects		232
Cases in which he may borrow on bottomry	III.	233
Account which he is required to send to his owners before his departure from a foreign port to return to France		235
Responsibility of the master in case of selling the goods on board without necessity		236
Only case in which the master can sell the ship without a special power from the owners		237
He is bound to finish the voyage for which he is engaged		238
He cannot trade on his own account when interested in the profit of the voyage	III.	240
What he must do in case of danger obliging him to abandon the ship		241
Attestation of his journal, and report which he must make on arrival		242, 243
Certificate which he must take from the French consul when he touches in a foreign port		245
What he ought to do in case of shipwreck		246, 247
He cannot discharge any goods except in case of imminent peril		248
Circumstances in which he may compel the people on board to put their provisions in common stock		249
He may be authorized, for the payment of his freight, to sell the goods brought in his ship, but cannot detain them on board		305, 306
He has a lien for his freight on the goods for a certain time		307, 308

**MAYORS,**

The books of merchants must be marked and certified by them or their assistants, or by the judges of the tribunal of commerce	I.	11
---	----	----

**MERCHANTS,**

At whose risk after delivery from the warehouse of the seller		100
The master of a ship is answerable for goods delivered to him	II.	242
In what cases he may pledge or sell it		234
Cannot be laden on board a ship on account of the captain or mariners without authorization		251
Circumstances in which the shipper may take back his goods		293
Limitation of actions in relation to goods not delivered from a ship		433
When goods are subject to decay, in case of failure the seals are taken off and they are sold	III.	464
Permission of the tribunal necessary to sell goods not of a perishable nature		464
Period in which the goods of an insolvent are delivered to the provisional assignees		491

**MERCHANTS.**

Who are considered merchants and traders	I.	1
Their obligations		8

**METALLIC SUBSTANCES.**

Brokers, concurrently with exchange-agents, may buy these substances		76
The latter alone can certify the current price		76

## Index.

375

### MINORS.

Book Art.

Conditions required to enable them validly to contract mercantile engagements	I. 2, 3
Rights which the authorization of father and mother give them	6
Bills of exchange, signed by minors, not merchants, are void in regard to them	114

### MORTGAGE.

Minors, who are merchants, and women, sole traders, cannot mortgage their real estate without authorization	6, 7
Period in which previous to a failure no mortgage can take effect on the real estate of the debtor	III. 443
Confirmation of the concordate preserves the lien of the creditors	524
Registry of mortgages required for the benefit of an insolvent	499, 500

### MOVEABLES.

An enumeration and valuation to be made in cases of insolvency	471
To whom delivered after the termination of the inventory	491
How disposed of	I. 122

## N.

### NOTARIES.

Penalties for their neglect to report an abstract of the marriage contract between parties, one of whom being a merchant	68
Notaries draw up policies of insurance	79
Protests for non-acceptance or non-payment of bills of exchange are made by a notary and two witnesses	173
Formalities which notaries must observe on pain of loss of office and damages	176
Bottomry bonds drawn and certified by them	II. 311

### NOTORIETY.

In case of failure, public notoriety is sufficient to authorize the affixion of the seals	III. 449, 450
Cases of fraudulent bankruptcy may be prosecuted on public notoriety, by the imperial prosecutors	595

### NULLITY.

Formalities prescribed under pain of nullity, for the delivery, transcription, and notification of the abstract of partnership agreements	I. 42
Causes which render contracts of insurance null	II. 347. 349. 357. 365
Nullity of payments made in fraud of creditors	III. 447
Also of a composition between an insolvent and his creditors in certain cases	519. 521, 522, 523, 524
Circumstances in which actions, protestations and demands shall be null	436

## O.

### OBLIGATIONS,

Those which a woman, sole trader, may contract without the consent of her husband	I. 5
What obligations are reputed commercial acts	IV. 632

### OPPOSITION,

When the creditors of an insolvent are admitted to oppose a judgment of separation or divorce between husband and wife	I. 66
Opposition to the payment of a bill of exchange	149
Demands of severance of property are converted into oppositions to the payment of the whole in certain cases	II. 210
Time for putting in oppositions	212

**OPPOSITION—(Continued.)**

Delay allowed to opposing creditors to produce their titles	Book Art. II. 213, 214
The creditors in default are allowed until the last dividend to put in their oppositions	III. 513
Any party interested may bring forward an opposition to the restoration of an insolvent	608
Competency in regard to oppositions to the concordate	IV. 635

**OUTFITS,**

Of ships and vessels subject to a lien for the principal and interest of loans on bottomry	II. 320
--	---------

**P.****PARTIES.**

In default of producing the books of a party in a cause, the judge may receive the oath of the opposite party in evidence	I. 17
Case in which an exchange-agent or broker may be condemned in damages towards the parties	27
How the rights of parties are regulated in case of the nullity of bills of exchange, signed by minors not merchants	114

**PARTNERS,**

Which of them are jointly and severally responsible for the engagements of the partnership	28
Their disputes decided by arbitration	51
Provisions in relation to the widows, heirs, and legal representatives of partners	62
Commanditary partners, what	23
The name of a commanditary partner cannot enter into firm of the partnership	25
How made liable for losses	26
They have no right to intermeddle in the management of the business	27

*See Partnership.***PARTNERSHIP,**

How the contract regulated	18
Different species of commercial partnerships and their characteristic distinctions	19, 20, 22, 23, 24. 29. 31
Losses for which anonymous partnerships are liable	33
Division of the capital of this sort of partnership	34
It must be authorized by the government	37
The capital stock of <i>commandite</i> partnership may be divided into shares	38
Acts or instruments proving the different species of partnership	39, 40
Abstracts of the articles of partnership must be recorded in the clerk's office and posted up	42
Formalities relative to partnerships which have several houses in different districts	42
How a continuation of a partnership, after the expiration of its term, is to be proved	46
Commercial associations in participation, or joint concerns	47
Objects for which they are formed	48
In what manner proved	49
Formalities from which they are exempt	59
In case of failure, how the declaration should be made	III. 440

**PILLAGE,**

At whose charge are the damages and losses occasioned by the pillage of a vessel	II. 350
--	---------

<b>PILOTAGE,</b>	
Is among the number of privileged debts	Book Art. II. 191, 192
<b>PLEADING.</b>	
Authorization of the party necessary to plead in a tribunal of commerce	IV. 627
<b>POLICY OF INSURANCE.</b>	<i>See Insurance.</i>
<b>PREMIUM.</b>	
Insurance brokers certify the rate of premiums of insurance	I. 79
Premiums of insurance on the outfits and equipment which are among the number of privileged debts	II. 191, 192
Proportionate rate by which may be fixed the premium of reinsurance	342
By whom the increase of premium, in case of war, is fixed	343
Case in which the premium is due to the insurer	351
Reduction of the premium in certain cases	356
Case in which a double premium is paid by the insurer or the insured	348
<b>PRESCRIPTION</b>	
The captain cannot acquire the property of the ship by means of prescription	430
<b>PRESUMPTION.</b>	
Circumstances in which that of the loss or arrival annuls the insurance	345
<b>PRIVILEGE,</b>	
Of a factor who has made advances on goods	I. 93
Mode of verifying privileged debts for which creditors have a lien on ships and vessels	II. 193
How these privileges in case of the judicial sale of the vessel are discharged	197
Privilege of the captain, and circumstances in which the mariners have a lien on the goods saved	423
No privilege can be acquired on the property of an insolvent within ten days next preceding his failure	III. 443
General privilege of the creditors on all the estate of an insolvent	533
<b>PROCLAMATIONS,</b>	
To be made on the judicial sale of ships and vessels	II. 202
What they must announce	204
Bids received after each proclamation	205
The final sale after the third	206
	<i>See Seizure.</i>
<b>PROCURATION.</b>	
A <i>commanditary</i> partner, even in virtue of a procuration, cannot transact any business on account of the partnership	I. 27, 28
Case in which an endorsement is only a procuration	138
<b>PROMISSORY NOTES,</b>	
Provisions in regard to them	I. 187
Form in which they should be made	188
Cases in which they are subject to the jurisdiction of the civil tribunals, or the tribunals of commerce	IV. 636, 637

	Book	Art.
<b>PROOF,</b>		
By <i>parol</i> testimony, is not admitted in respect to partnership transactions, when the amount in question is less than a hundred and fifty francs	I.	41
Cases in which <i>parol</i> testimony is admitted	49.	199
<b>PROSECUTORS,</b>		
<i>Imperial.</i> Cases in which they must interpose an appeal from the judgments of the tribunals of correctional police	III.	581
They must, as well as their deputies, <i>ex officio</i> , prosecute all cases of fraudulent bankruptcy before the courts of criminal jurisdiction		595
Their functions in respect to demands of restoration		608
<b>PROTEST,</b>		
As an evidence of non-acceptance of a bill of exchange	L.	119
What are the obligations of the drawer and endorsers when notified of a protest for non-acceptance		120
Act of protestation in the case of refusal of payment of a bill of exchange lost		153
Protest for non-payment		166
By whom, where made, and the formalities to be observed	173, 174, 175,	176
The return-accout must be accompanied with the protest		181
<b>PROVISION.</b>		
By whom made to meet the payment of a bill of exchange		115
In what cases provision is considered as made		116
Effects of acceptance in regard to provision		117
<b>PUBLIC EXCHANGE,</b>		
Definition of		71
Negotiations and transactions which take place there		72
No merchant who has failed in business can show himself on the exchange until he has paid the full amount of his debts, and been restored to his former rights according to law	III.	614
<b>R.</b>		
<b>RANSOM,</b>		
Cases in which seamen taken on board a ship and carried into slavery are entitled to be ransomed	II.	266
The same provision in regard to the officers and other persons of the ship's company		272
Mode of payment of freight in case of the ransom of goods		303
How the contribution is made for the ransom		304
<b>RE-EXCHANGE,</b>		
How effected	I.	177
How regulated in regard to the drawer and endorsers		179
The re-exchanges cannot be accumulated		183
Cases in which no re-exchange is due		186
<b>REGISTER,</b>		
Merchants must keep one for the transcription of their letters		8
Special register for the annual inventory		9
Transport bills must be copied in a register		102
Particular register for the transcription of protests		176
Register or journal which a master of a ship must keep	II.	242
Attestation of this register on his arrival		294
The seals must be affixed on the registers of an insolvent	III.	451

<b>REGISTER—(Continued.)</b>	<b>Book Art.</b>
Decrees of restoration in cases of insolvency must be transcribed on the registers of the tribunal of the district and of commerce	III. 611
<b>REINSURANCE,</b>	
The insurer may cause reinsurance to be made on goods which he has insured	II. 342
<b>REMITTANCES,</b>	
Of commercial securities may be stopped <i>in transitu</i> in certain cases	III. 583
Of money from place to place are reputed commercial acts	IV. 632
<b>REPRISALS,</b>	
The losses and damages resulting therefrom, by whom borne	II. 350
<b>RESPONSIBILITY,</b>	
Of a notary for the non-observance of the formalities required by law in relation to marriage contracts	I. 68
Of the owner of a ship	II. 216
Of the captain in certain cases	221, 222, 228
<b>RESTORATION</b>	
Insolvents legally restored to their former rights and privileges may be exchange-agents and brokers	I. 83
By the confirmation of the concordate the insolvent is declared executable and susceptible of restoration	III. 526
When there is a union of the creditors, the tribunal decides the question	531
To what court ought the insolvent to address his petition for restoration	604
Formalities to be observed in relation to it	605, 607
It may be opposed	608
Information which must thereupon be transmitted to the attorney-general of the court of appeal	609
In case of rejection the demand cannot again be repeated	610
Public reading of the decree in favour of restoration	611
Persons who are not admitted to restoration	612
Cases in which persons charged with simple bankruptcy may obtain it	613
No merchant who has failed can show himself on the exchange till he has obtained it	614
<b>RETURN ACCOUNT,</b>	
Of the charges of protests, re-exchange, &c. of a bill of exchange	I. 180
There cannot be several on the same bill of exchange	182
<b>REVENDEICATION.</b>	<i>See Stoppage in transitu.</i>
<b>RIGGING AND APPAREL,</b>	
<i>Of a Ship.</i> The subject of a respondentia loan	II. 315
The subject of insurance	334
Are liable for the performance of charter-parties, &c.	280
Are subject to the lien of respondentia loans	320
<b>RISKS,</b>	
Their duration in regard to bottomry and respondentia bonds on ship, apparel, &c. and on merchandise	328
In regard to insurance	341
Losses which are within the risks insured against	350
	<i>See Insurance.</i>
<b>ROLL OF EQUIPAGE.</b>	<i>See Shipping Articles.</i>

**RUNNING FOUL,**

Regulations declaring by whom the damage occasioned by ves-  
sels running foul of each other, shall be borne Book Art.  
II. 350. 407

**RUPTURE OF VOYAGE.** *See Voyage.***S.****SAFECONDUCT,**

Granted to an insolvent after the affixion of the seals III. 466  
May be demanded of the tribunal of commerce by the insolvent  
himself 467  
The agents call in the insolvent after he has obtained a safeconduct 468  
Case in which it cannot be granted 490  
After it is obtained the provisional assignees may employ the in-  
solvent to assist them in adjusting the accounts 493  
When the insolvent, being invested with a safeconduct, does not  
appear in court, he is reputed a fraudulent bankrupt 573

**SEALS,**

Must be affixed as soon as the tribunal has cognizance of the  
failure 449  
Public notoriety is sufficient to authorize the justice of the peace to  
affix the seals 460  
Objects on which the seals may be affixed 461  
In different domicils in cases of the failure of partnerships 462  
Books and papers to be taken out 463  
The seals are removed at the request of the provisional assignees 466, 487

**SEAMEN,**

The master has a right to select and hire the seamen II. 233  
How the conditions of their engagement are proved 250  
Are paid the days' work during the time employed, and an indem-  
nity when the voyage is broken up 252  
Cases in which they have only a right to be paid for their day's work 253  
No diminution of their wages takes place when the vessel is volun-  
tarily discharged in a nearer place than that of her desti-  
nation 256  
How the indemnity is to be regulated according to the case of  
rupture, delay, or prolongation of the voyage 257  
When the ship and cargo are lost they cannot claim any wages 258  
How paid when a part is saved 279  
Their treatment, and pay, in case of sickness and death 282, 265  
Their rights in case of captivity and made slaves 266  
When dismissed without a valid cause 269  
The ship and freight are specially bound for their wages 271  
Their wages do not contribute to the ransom of goods captured  
by the enemy 304

**SECURITY,**

For the drawer and endorsers of a bill of exchange I. 190  
For the payment of a bill lost 151, 152  
Extinction of the security after a certain time 155  
By the master and crew of a ship given for debts contracted for the  
voyage on which they are bound, exempts them from per-  
sonal arrest II. 234  
May be demanded in case of the failure of the insurer or insured 346  
By an insolvent to obtain a safeconduct III. 466  
In case of insolvency how admitted among the mass of debts 638

**SEIZURE,**

The personal property of the drawer, acceptor, and endorser of  
a bill of exchange may be conservatively seized with per-  
mission of the judge I. 172



**SEIZURE—(Continued.)**

	Book Art.
Ships and vessels may be seized and sold by judicial authority	II. 197
Previous order, and the particulars which the report of the seizure ought to contain	198. 900
Establishment of guards	198. 900
Notification of the report and citation	901
Proclamations and publications required	908
Causes for which a vessel ready to sail, may be seized	915

**SEPARATION OF PROPERTY,**

<i>Between Man and Wife. How made</i>	I. 63
Obligations of the parties, in case of separation, when married under the dotal regulation, and become merchants	69, 70

**SEQUESTRATION.**

In what case may the sequestration of property transported be ordered	106
---	-----

**SHIPS AND VESSELS,**

Are personal property	II. 190
Not liable to seizure when ready to sail except in a single case	215
What debts are privileged by a lien on them	191
In what circumstances they are presumed to have made a voyage	194
How a voluntary sale is effected	195
Formalities required in the seizure and sale of ships and vessels	197—209
Responsibility of the owners in relation to the acts of the master	216
The master must have the certificate of ownership on board	226
Expenses due on account of delay in the departure	294
Regulation respecting the freight in case it be necessary to make repairs during the voyage	296
<i>See Master of Ships.</i>	

**SHIPPER,**

One of a set of bills of lading retained by him	281
Expenses to be borne by him in case of interdiction of commerce before the departure of the vessel	276
Must furnish the master with acquittances or certificates from the custom-house within a certain period	282
Must indemnify the master in case of withdrawing his goods before the departure of the ship	291
Cases in which he may abandon the goods for the freight	311

**SHIP BROKERS.***See Brokers.***SHIPMENT.***See Cargo.***SIGNATURES,**

The abstract of the partnership agreement must contain the designation of the partners authorized to sign for the partnership	I. 43
Of what validity is the signature of a woman, married, or single, not a sole trader, to a bill of exchange	113
Proportion of signatures to commercial paper in circulation which subjects an insolvent debtor to the imputation of bankruptcy	III. 586

**STELLIONATE.**

Persons guilty of stellionate cannot be admitted to the benefit of an assignment nor to restoration	575. 612
---	----------

**STOPPAGE IN TRANSITU,**

Of goods sold, in cases of failure	576—579
The identity must be proved to authorize it	580
In the case of goods consigned or deposited	581

<b>STOPPAGE IN TRANSITU—(Continued.)</b>	<b>Book Am.</b>
Circumstances in which the assignees of an insolvent may retain the goods stopped <i>in transitu</i> , and may themselves stop remittances in commercial securities	III. 581
<b>STOPPAGE OF PAYMENT,</b>	
Must be made known by a declaration of the insolvent at the clerk's office within three days after his stoppage	449
<b>STRANDING.</b>	
At whose charge are the losses and damages occasioned by stranding	II. 299
When there has been a stranding with wreck, the subject insured may be abandoned	369
<b>SUMMONS,</b>	
The certificate of protest should contain the summons to pay the amount of the bill	I. 174
Sent to an insolvent to appear and adjust his book	III. 468
The creditors are summoned to deliver their titles to the assignees or deposit them in the clerk's office	502
<b>TACKLE.</b>	<i>See Rigging and Apparel.</i>
<b>TRADERS.</b>	<i>See Merchants.</i>
<b>TRANSFER,</b>	
How effected under a title or certificate to the bearer	I. 35, 36
Cases in which the endorsement of a bill of exchange does not effect the transfer	38
<b>TRANSLATION.</b>	
Ship brokers and interpreters have solely the right to translate mercantile papers to be produced in the tribunals of commerce	80
<b>TRANSPORT BILL,</b>	
Is evidence of a contract between the consignor and carrier	101
Its form and registry	102
<b>TREASURER,</b>	
Appointed by the creditors to receive the money due to the estate of an insolvent	III. 527
He must subscribe or endorse on the titles of the creditors the payments as dividends made to them	561
<b>TRIBUNAL OF COMMERCE.</b>	
Its power in the appointment of arbitrators	I. 55
The president regulates certain accounts	II. 192
Number of these tribunals	IV. 615
Their local jurisdiction	66
How composed, and mode of election	617, 618, 621. 623
Clerks and bailiffs	621
The functions of the judges only honorary	623
Subject to the superintendence of the grand judge	630
Their competency	631
In what cases they decide without appeal	639
<i>See Assignees. Bankrupt. Insolvent. Master of Ships.</i>	
<b>TRIBUNALS OF CORRECTIONAL POLICE,</b>	
Try persons charged with the misdemeanor of simple bankruptcy	III. 583
According to the circumstances of the case, sentence to imprisonment	592

**TONNAGE,**

- The rights of pilotage, tonnage, &c. are among the number of privileged debts Book Art.  
IL 191, 192  
 Of the vessel must be mentioned in the bill of lading IL 281  
 The captain who has declared a vessel of more tonnage than she really is, shall be answerable in damages 289

**TUTORS.***See Guardians.***U.****UNION,**

- Cases in which the creditors of an insolvent form a contract of union III. 527  
 When the commissioner-judge finds the insolvent excusable, he reports it to the union of creditors 531  
 This union is convened in order to receive the account of the assignees 562  
 It may cause itself to be authorized to dispose of the rights of action of the insolvent 563

**USANCE.**

- How many days constitute usance I. 132

**V.****VALUE.**

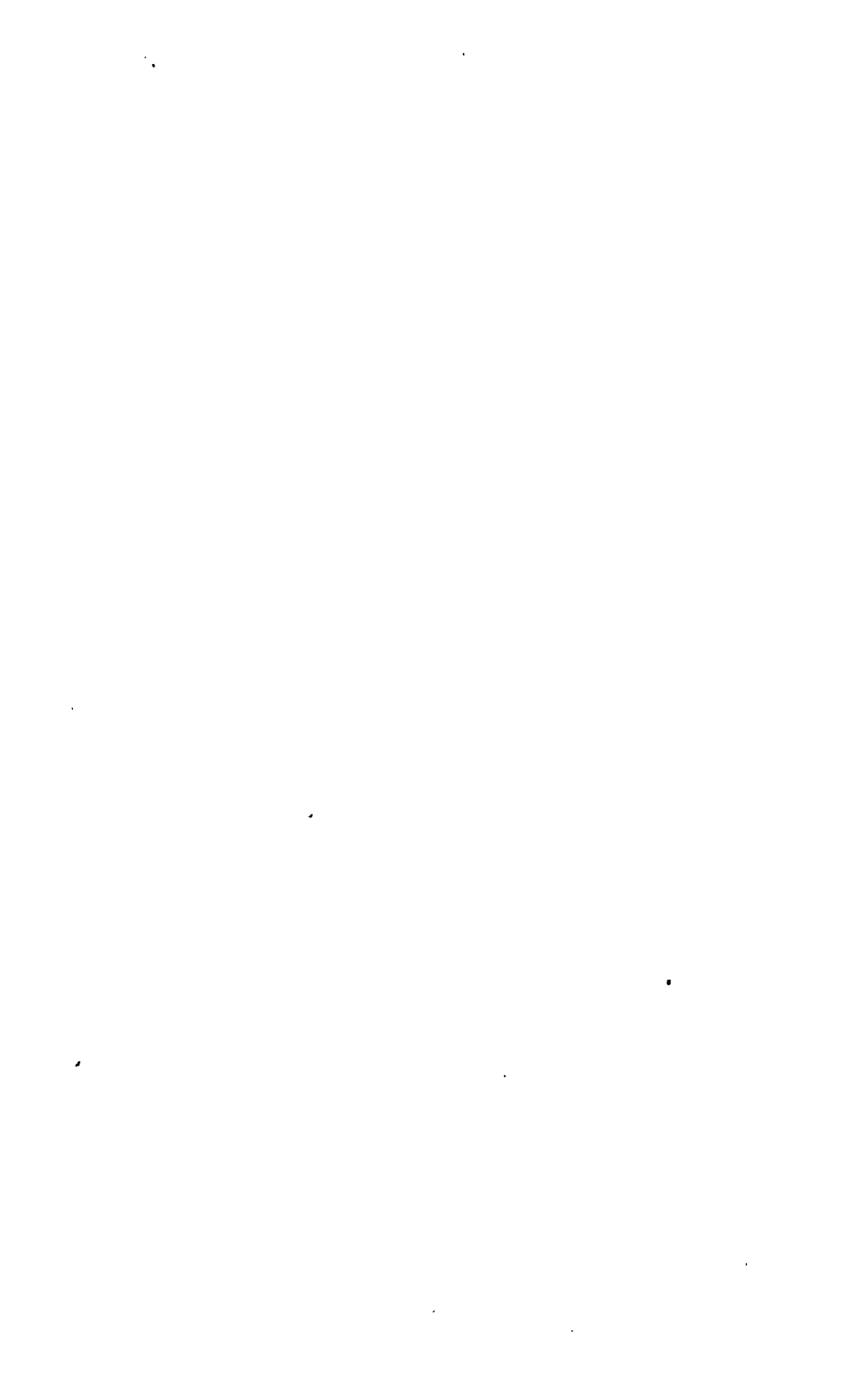
- The abstract of partnership agreements ought to contain the amount of the value furnished, or to be furnished 43  
 The factor, charged with the transportation of goods, must mention their value on his journal, if required 96  
 In bills of exchange, the manner in which the value has been furnished must be mentioned 110  
 The endorsement ought also to express this value 137  
 It is the same with promissory notes 138

**VERIFICATION.** *See Assignees. Creditors. Insolvent. Proof.***W.****WIDOWS OF PARTNERS,**

- Provisions which relate to them 62  
 Affirmation required from the widows of presumed debtors on bills of exchange barred by limitation of time 139

**WOMEN,**

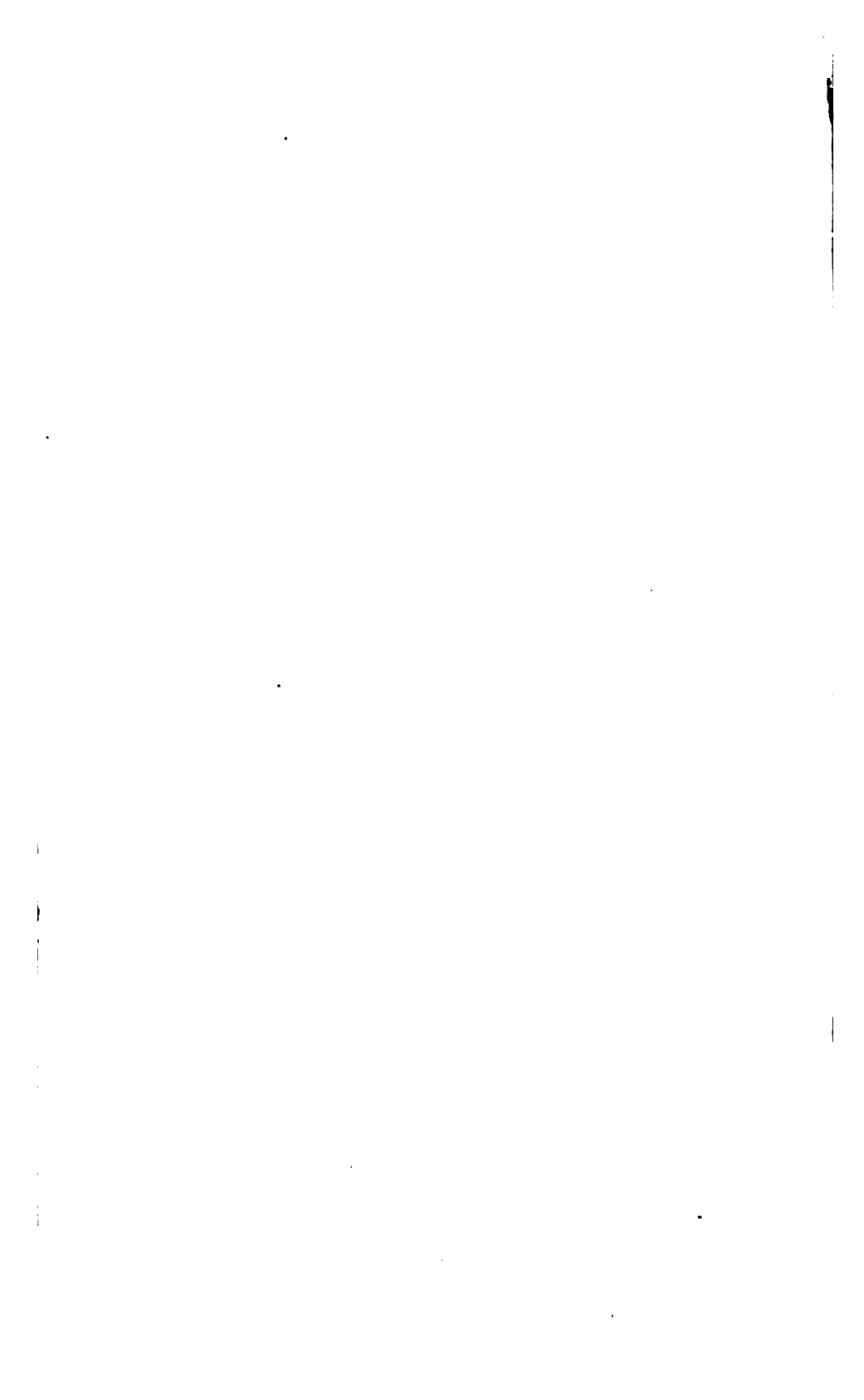
- Cannot be *sole traders* without the authorization of their husbands 4  
 Effect of the obligations by them contracted in the course of trade 5  
 In what manner their rights are regulated in case of failure III. 544  
 Effect of their signature to bills of exchange, when they are not *sole traders* I. 113













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